

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 22, 2022

TOPIC: Introduction of an Ordinance to Purchase 50-58 West Antietam Street

Charter Amendment _____

Code Amendment _____

Ordinance **X**

Resolution _____

Other _____

MOTION: I hereby move to introduce an Ordinance to approve the “Agreement of Sale” for the purchase of real property known as 50-58 West Antietam Street for the construction of a parking deck.

Date of Introduction: 11/22/2022

Date of Passage: 12/20/2022

Effective Date: 01/19/2023

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO APPROVE THE PURCHASE
OF REAL PROPERTY KNOWN AS
50-58 WEST ANTIETAM STREET, HAGERSTOWN, MARYLAND**

RECITALS

WHEREAS, Hager5, LLC, a Maryland limited liability company, owns real property located at 50-58 West Antietam Street in Hagerstown, Maryland (hereinafter the "Property"); and

WHEREAS, the Property is currently used as a parking lot; and

WHEREAS, the Property's location makes it ideal for construction of a parking deck to serve identified parking needs of the City; and

WHEREAS, the Mayor and Council believe that the acquisition of the Property is consistent with the goals and priorities of the Mayor and Council; and

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to do so;

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 50-58 West Antietam Street be and is hereby approved.
3. That the Mayor be and is hereby authorized to execute and deliver the Agreement of Sale for 50-58 West Antietam Street, a copy of which is attached hereto and incorporated herein by reference.
4. That the Mayor and 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 Agreement of Sale, including but not limited to the assignment and assumption of any leases relating to the Property.

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 Keller, Mayor

Date of Introduction: November 22, 2022
Date of Passage: December 20, 2022
Effective Date: January 19, 2023

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

AGREEMENT OF SALE

THIS AGREEMENT OF SALE ("Agreement") is made as of the ____ day of _____, 2022 by and between **HAGER5, LLC, a Maryland limited liability company** (the "Seller") and the CITY OF HAGERSTOWN, a Maryland municipal corporation, or its nominee or assignee (the "Buyer"), under the following circumstances:

Seller is the fee simple owner of those certain parcels of real property, located at 50-58 West Antietam Street in Washington County, Maryland consisting of +/- 38,225.1 square feet as more particularly shown and described on the Boundary Line Survey attached hereto and incorporated herein as **Exhibit A** (the "Land"), saving and excepting the +/- 0.05 ac. (2,333 sf.) previously sold and transferred to Buyer by Deed dated May 27, 2021 and recorded among the Land Records of Washington County at Book 6640, Page 169 and as shown and described on the Plat recorded among the Land Records of Washington County at Plat 11255-11256. Seller desires to sell the Property (hereinafter defined) to Buyer, and Buyer desires to acquire the Property for purposes of constructing a parking deck. Following execution of this Agreement of Sale, but prior to any closing, Buyer shall engage in its procurement process for construction of the parking deck. If, after evaluating the resulting bids, Buyer determines it cannot proceed with construction of the parking deck, Buyer shall be released fully from its obligations under this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - PURCHASE AND SALE

1.1 **Recitals.** The foregoing recitals be and are hereby incorporated herein by reference.

1.2 **Property.** "**Property**" shall mean, collectively: (a) the Land, (b) all improvements constructed upon Land, (c) all mineral rights, rights of way or use, servitudes, easements, and appurtenances belonging to the Land, (d) to the extent of Seller's interest therein, the bed of any street, alley, or road adjoining the Land, and (e) all land use, zoning, subdivision and other governmental approvals, permits and entitlements which are applicable to the Land, including all rights of Seller to any plans and specifications relating thereto (collectively, the "**Plans**").

1.3 **Purchase and Sale.** Seller agrees to sell and Buyer agrees to purchase the Property, upon the terms and conditions set forth herein.

1.4 **Purchase Price.** The purchase price to be paid for the Property (the "**Purchase Price**") shall be ONE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,200,000.00).

1.5 **Deposit.** Within TWO (2) business days after the Effective Date (hereinafter defined), Buyer shall deliver to Lincoln Title & Settlement Services, LLC ("**Escrow Agent**" and "**Title Company**"), in cash or by wire transfer of immediately available funds, the sum of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) (the "**Deposit**"). Upon expiration of the Inspection Period, the Deposit shall become non-refundable except in the event of a default by Seller or failure of any express condition of Closing as provided for herein.

1.6 **Escrow Agent.** Escrow Agent shall hold and disburse the Deposit in accordance with the terms and provisions hereof. If a dispute arises between Seller and Buyer concerning the distribution of the Deposit, Escrow Agent may deposit the Deposit with a court of competent jurisdiction and interplead Seller and Buyer with respect thereto. Seller and Buyer shall each reimburse Escrow Agent for one-half of any reasonable costs and expenses incurred by Escrow Agent as a result of any such dispute.

1.7 **Inspection Period; Survey.** (a) Buyer shall have SIXTY (60) days from the Effective Date (the "**Inspection Period**") during which to inspect and investigate the Property and determine if the Property is suitable for Buyer's intended use. Without limitation, Buyer may, upon reasonable notice to Seller, enter upon the Property at any reasonable time to conduct and perform such tests, surveys and evaluations as Buyer deems necessary. Buyer's right to enter and inspect the property as described above shall continue until the Closing (or earlier termination of this Agreement as permitted hereby). Buyer shall have the right to terminate this Agreement by providing written notice to Seller prior to 5:00 p.m. Eastern Time on the last day of the Inspection Period. Upon providing said written notice, the Agreement shall be deemed terminated, the Deposit shall be

returned to Buyer and, except as otherwise expressly provided for in this Agreement, the parties shall be relieved of any and all further obligations hereunder.

(b) Buyer will advise Seller in writing at least 48 hours before entry of the dates of any and all tests and will schedule all such tests during evening or weekend hours whenever feasible unless otherwise requested by Seller. Seller will have the right to have a representative of Seller accompany Buyer and Buyer's representatives, agents or designees while they are on Property and prior to Buyer's communication with any tenants or vendor/service provider of Seller. Any entry by Buyer, its representative, agents or designees will not materially interfere with Seller's or any tenants' use of the Property.

(c) Buyer will restore any damage to the property caused by Buyer or its agents at Buyer's sole cost and expense if this transaction does not close. Until restoration is complete, Buyer will take all steps necessary to ensure that any conditions on the Property created by Buyer's testing will not materially interfere with the normal operation of the Property or tenants or their employees, or create any dangerous, unhealthy, unsightly or noisy conditions on the Property.

(d) Before commencing any entry involving physical testing, drilling or other physical disturbance, Seller may require Buyer to provide Seller with proof of comprehensive or commercial general liability insurance covering Buyer or its consultant or contractor performing the work, which insurance shall include, but not be limited to, completed operations and broad form property damage coverage and which shall name Seller as an additional insured. The insurers and the amounts and coverages of such policies shall be satisfactory to Seller. This provision will survive the Closing or any earlier termination of this Agreement.

1.8 Seller's Materials. Within FIVE (5) business days after the Effective Date, Seller shall deliver to Buyer copies of all surveys, soil tests, environmental reports, traffic studies, building or site plans, correspondence from any governmental authority, or other similar documents or reports, if any, which are within Seller's possession or control.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

2.1 Covenants, Representations, and Warranties of Seller. (a) Seller represents and warrants to Buyer that, to the best of Seller's knowledge as of the Effective Date: (1) other than the Parking Agreement (defined below) and Short Term Parking Permits (defined below), Seller has not executed any leases, easements, or other encumbrances or agreements affecting all or any portion of the Property which are not recorded and which will remain in effect after Closing; (2) Seller has the power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder, and upon such execution and delivery, this Agreement shall be valid and enforceable against Seller in accordance with its terms; (3) Seller is not a party or a potential party to any pending, contemplated, or (to Seller's knowledge) threatened bankruptcy or similar proceeding or litigation, under any federal, state, or local law, which might adversely affect the Property or Seller's ability to perform its obligations hereunder; (4) the execution of this Agreement by Seller will not violate any law, rule, regulation, court order, contract, agreement, or commitment or obligation by which the Property or Seller is affected; (5) except as specifically set forth in any environmental reports delivered to Buyer, no hazardous materials are present or have been released in, on, or under the Property prior to or during Seller's ownership of the Property; (6) Seller is not a "foreign person" as defined in Section 1445(b)(2) of the Internal Revenue Code, as amended ("FIRPTA"); and (7) all bills and claims for labor performed or materials furnished to or for the Property have been fully paid. The foregoing representation and warranties are referred to as "**Seller's Representations**." All of Seller's Representations shall be deemed to be remade as of the Closing Date. As used and referred to herein, the "**Parking Agreement**" refers to that certain Parking Space Rental Agreement with BCP Hagerstown LP, a Delaware limited partnership, dated March 10, 2022 and recorded among the Land Records of Washington County at Book 6950, Page 386, a copy of which is attached hereto and incorporated herein as Exhibit B. As used and referred to herein, the "**Short Term Parking Permits**" shall mean collectively

those certain short term lease agreements for monthly parking permits listed and identified on Exhibit C attached hereto and incorporated herein.

(b) Seller shall execute and deliver to the Title Company at Closing an affidavit (the “**Owner’s Affidavit**”) in form and content reasonably approved by Seller and the Title Company in order to satisfy any reasonable “seller” requirements for issuance of an ALTA form owner’s policy of title insurance (“**Title Policy**”) to Buyer.

2.2 Representations and Warranties of Buyer. Buyer covenants, represents, and warrants to Seller, as of the Effective Date and as of the Closing Date, that: (a) Buyer has the power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder, and upon such execution and delivery, this Agreement shall be valid and enforceable against Buyer in accordance with its terms; and (b) Buyer is not a party or a potential party to any pending, contemplated, or (to Buyer’s knowledge) threatened bankruptcy or similar proceeding under any federal, state, or local law.

ARTICLE III - CLOSING

3.1 Closing. (a) Closing under this Agreement (“**Closing**”) shall occur at the offices of the Title Company on a date (the “**Closing Date**”) designated by Buyer, not later than THIRTY (30) days immediately following Buyer’s award of a bid for construction of the parking deck. In the event Buyer has not awarded a bid for construction and proceeded to Closing prior to April 1, 2023 (the “**Outside Closing Date**”) then Seller shall have the right to terminate this Agreement upon providing no less than THIRTY (30) days advance written notice to Buyer.

(b) At Closing, Seller shall deliver to the Title Company the following: (i) a special warranty deed from Seller to Buyer, in form reasonably acceptable to Buyer and the Title Company, conveying good and marketable fee simple title to the Property, free and clear of all liens and encumbrances of any kind, except for Permitted Exceptions (defined below) (the “**Deed**”); (ii) an affidavit as required under FIRPTA; (iii) the Owner’s Affidavit; (iv) a settlement statement setting forth all amounts to be paid or received by Buyer or Seller at Closing, as reasonably approved by the parties consistent herewith (the “**Settlement Statement**”); (v) such documents and other evidence as are required to satisfy all requirements for issuance of the Title Policy by the Title Company other than those imposed upon Buyer; (vi) a reaffirmation of Seller’s Representations as of the Closing Date; (vii) an Assignment and Assumption Agreement, in form and substance mutually satisfactory to Buyer and Seller (the “**Assignment Agreement**”), assigning the Parking Agreement and Short Term Parking Permits (excluding those provided to F&M Trust Bank and the United Way pursuant to separate lease agreements for office space in the adjacent building owned by Seller. Assignment of the parking spaces used by the Public Defender’s Office shall be contingent upon and subject to mutual agreement of a Lease Amendment permitting said assignment) to Buyer, the form of which is attached hereto and incorporated herein as Exhibit D; and (viii) such other documents as may be reasonably necessary to consummate Closing. “**Permitted Exceptions**” shall mean and refer to the Parking Agreement, Short Term Parking Permits, an easement to be retained and reserved by Seller whereby Seller may mount upon any structure constructed by the Buyer on the Property a satellite dish or other signal booster/repeater device capable of maintaining “line of sight” between the properties owned by Seller located at 81 W. Washington Street and 37 W. Antietam Street (which shall be provided for in the Deed and shall permit the Buyer, in its reasonable discretion, to approve the placement location and appearance of the device to be utilized), and all easements, covenants, conditions, restrictions and other title matters encumbering the Land as of the date hereof, or otherwise permitted under the terms of this Agreement, except for monetary encumbrances, all of which shall be paid by Seller at or before Closing, and except for any matters which Seller agrees in writing to cure.

(c) At Closing, Buyer shall deliver to the Title Company the following: (i) the balance of the Purchase Price; (ii) such other amounts as may be necessary to consummate Closing, as shown on the Settlement Statement; (iii) the Settlement Statement; (iv) the Assignment Agreement; and (v) such documents and other evidence as are required to satisfy all requirements for issuance of the Title Policy by the Title Company other than those imposed upon Seller.

(d) Upon the Title Company's: (i) receipt of all items to be delivered by Seller, above; (ii) receipt of all funds and items to be delivered Buyer above; and (iii) confirmation that title to the Property is in the condition required by this Agreement, Title Company shall (A) deliver the Deed to Buyer for immediate recordation, (B) deliver all other documents held in escrow to the intended recipients, and (C) make all disbursements required under the Settlement Statement.

(e) Prior to demolishing and removing the existing structures and improvements from the Property for the purpose of redeveloping same, Buyer shall remove the existing light poles and light fixtures so that they may be re-used at another location by the Seller. After removal, Buyer shall leave the light poles and light fixtures on or near the site for pick up by Seller. Seller shall retrieve the light poles and light fixtures within ten (10) days. This provision shall survive Closing.

3.2 Conditions Precedent to Closing. Buyer's obligation to consummate Closing under and in accordance with this Agreement shall be contingent upon the following: (i) Seller shall have made all Closing deliveries required of Seller under this Agreement; (ii) Seller's Representations shall continue to be true and correct as of the Closing Date, as though made and given on such date, (iii) no environmental contamination exists on the Property, and (iv) Buyer shall have awarded a bid for construction of the parking deck on the Property. If any of the conditions in this Section are not satisfied, deemed approved or waived by Buyer, other than due to the default of Seller or Buyer under this Agreement (in which event the provisions of Section 5.1 shall apply), by the Outside Closing Date, then either party may, at any time after the Outside Closing Date, terminate this Agreement by written notice to the other, in which event the Deposit shall be immediately returned to Buyer by the Escrow Agent and this Agreement and the rights and obligations of the parties hereunder shall terminate; provided, however, no such termination shall be effective until Buyer has had the opportunity to waive any condition within two business days after receipt of such written termination notice from Seller.

3.3 Costs, Adjustments, and Indemnities. (a) Buyer shall be responsible for all costs and expenses of its due diligence, any investigation, consulting fees and attorneys' fees and expenses associated therewith, including the cost of title investigation and Title Policy premiums. Except as provided herein, Seller and Buyer shall each be responsible for their respective attorneys' fees and expenses incurred in the negotiation of this Agreement and the consummation of Closing. The costs of all documentary stamps, recordation taxes, and transfer taxes payable in connection with the conveyance of the Land, if any, shall be paid one-half by each of Seller and Buyer; provided, however, that any agricultural rollback taxes or similar recapture taxes shall be paid by Seller.

(b) All items of income and expense relating to the Property, including without limitation real estate taxes, utilities and income from or related to the Parking Agreement and Short Term Parking Permits, are to be adjusted between Buyer and Seller as of the Closing Date such that Seller shall be responsible for all days prior to the Closing Date and Buyer shall be responsible for the Closing Date and all days thereafter, provided that if Closing occurs before the applicable tax rate or assessed valuation are fixed for the period during which Closing occurs, the adjustment of real estate taxes shall be based upon the tax rate and assessed valuation for the most recent period for which both such items are known. Promptly after such items are fixed for period during which Closing occurs, the parties shall further adjust real estate taxes based upon the fixed values of such items. Any service contracts or maintenance agreements affecting the Property shall be terminated by Seller as of the Closing Date.

ARTICLE IV - CONDEMNATION

If, subsequent to the date of this Agreement and prior to the Closing, a material part of the Property is taken in the exercise of the power of eminent domain, which taking in Buyer's reasonable discretion has an adverse effect on the development of the Property for its intended use, Seller shall give prompt written notice thereof to Buyer, and Buyer may, by written notice to Seller, elect to terminate this Agreement, in which event Seller shall retain the Deposit, and, except as otherwise expressly set forth herein, Seller and Buyer shall have no further rights or obligations hereunder. If no election to terminate is made by Buyer, this Agreement will remain in full force and effect and the purchase and sale contemplated herein, less any interest taken by eminent domain, will be effected with no further adjustment, and Seller will, at the Closing, assign, transfer, and set over

to Buyer all Seller's rights, title, and interest in and to any awards that have been or that may thereafter be made for such taking. In such event, Seller will cooperate fully with Buyer (at no out-of-pocket expense to Seller) to maximize the award payable in respect of such taking, and in no event will Seller enter into any agreement with respect to any such award without Buyer's written consent.

ARTICLE V - DEFAULT; REMEDIES

5.1 Default, Remedies. (a) If Buyer defaults in any of its obligations under this Agreement, Seller, as its sole remedy, may terminate this Agreement by written notice to Buyer and receive the Deposit as full and complete liquidated damages.

(b) If Seller breaches any representation or warranty made hereunder or otherwise defaults in any of its obligations under this Agreement, the sole remedies of Buyer with respect to such failure shall be (i) the right to terminate this Agreement by written notice to Seller and obtain recovery from Seller of Buyer's actual damages incurred up to \$5,000.00 arising from such default and supported by receipts or invoices showing the amounts of damages, (ii) the right to the return of the Deposit (whether or not it terminates this Agreement), and/or (iii) the right to seek specific performance. In the event of contract termination by Buyer, whether for default by Seller or other reason, Buyer agrees to provide Seller with any original reports, letters, abstracts, test results, studies, surveys or other documentation pertaining to the Property obtained by Buyer during the Inspection Period.

5.2 Cure of Default. Notwithstanding any provision of this Agreement to the contrary, no breach or failure by Seller or Buyer hereunder shall give rise to the exercise by the other of any remedies hereunder, including without limitation the termination of this Agreement, unless the non-breaching party has notified the breaching party of such breach in writing, and the breaching party shall have failed to cure such breach or failure within TEN (10) business days after receipt of such written notice thereof, except that no such notice or right to cure shall be required in relation to the failure of either Buyer or Seller to consummate Closing as and when required hereunder.

ARTICLE VI - GENERAL

6.1 Notices. 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 electronic mail (with a hard copy sent within ONE (1) business day thereafter by overnight delivery), as follows: (i) if to Seller, to Hager5, LLC, c/o Greg Snook, 222 E. Oak Ridge Drive, Suite 100, Hagerstown, MD 21740 (email: gsnook56@gmail.com), with a copy to Jason Divelbiss, Esq., 11125 Bemisderfer Road, Greencastle, PA 17225 (email: jdivelbiss@divelbisslaw.com); and (ii) if to Buyer, to Scott A. Nicewarner, City Hall, 1 East Franklin Street, Hagerstown, Maryland 21740 (email: snicewarner@hagerstownmd.org), with a copy to Jason Morton, 82 West Washington Street, Suite 100, Hagerstown, Maryland 21740 (email: jmorton@salvatoremorton.com) with a copy by email only to Rodney A. Tissue, City Engineer (rtissue@hagerstownmd.org). Any party may change the address to which such notices, requests, demands, and other communications are to be directed by giving written notice of such new address to all other parties in the manner provided above. Any notice, request, demand, or other communication shall be deemed received upon the earlier of (i) the date of the e-mail if received by 5 p.m. local time of a business day, (ii) actual delivery thereof, (iii) any refusal of such delivery, or (iv) if such delivery is impossible because of the intended recipient's failure to provide the other party with notice of an address change, upon any attempt of such delivery to the address(es) set forth above.

6.2 Broker. Each of Seller and Buyer represents and warrants to the other that it has not engaged or otherwise dealt with any brokers, finders or other intermediaries in connection with the transaction contemplated hereby. Each of Seller and Buyer agrees to indemnify, defend, and hold the other harmless from and against any and all claims arising out of the breach of the foregoing representation and warranty. The obligations of the parties under this paragraph shall survive Closing and delivery of the Deed.

6.3 Like-Kind Exchange. Buyer and Seller acknowledge that Seller may desire to transfer the Property subject to a like kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended,

and Buyer agrees to reasonably cooperate and participate, at Seller's request, so long as (a) such exchange transaction is at no additional cost to Buyer, (b) Buyer does not have to take title to or convey any other property in connection with such exchange, (c) Seller shall defend, indemnify and hold Buyer harmless, its managers, members, agents, assigns and successors in interest, from all loss, cost, expense, obligation, liability, and/or damages that Buyer might suffer (including attorneys' fees) in connection with Buyer's participation in Seller's exchange, and (d) Closing is not delayed on account of Seller's exchange. It is the intent of the parties that Buyer incur no income tax liability as a result of cooperating with Seller in consummating a like kind exchange, and that Buyer shall have no responsibility or liability for the tax consequences to Seller or any other person of such efforts to effect a like kind exchange. Buyer and Seller acknowledge and agree that the conveyance of the Property at Closing is in no way conditioned upon Seller's ability to effect a like-kind exchange.

6.4 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. Seller acknowledges that Buyer shall have the right to assign Buyer's interest under this Agreement without Seller's consent, provided that such assignment shall not release Buyer from its obligations hereunder.

6.5 Miscellaneous. (a) No failure or delay by any party in exercising any right or discretion hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or discretion preclude any other exercise thereof or the exercise of any other right or discretion. (b) No waiver shall be effective unless in writing and executed on behalf of the party granting such waiver. (c) This Agreement may be executed in two (2) or more counterparts which, when assembled, shall constitute a single original. (d) Delivery by e-mail of a PDF copy shall constitute good and valid delivery. This Agreement shall be governed by the laws of the State of Maryland, without regard to any conflict of laws principles, and any action for the breach or enforcement hereof shall be brought in a court of competent jurisdiction within Washington County, State of Maryland. (e) The "**Effective Date**" of this Agreement will be the date that the Agreement is fully executed and delivered by the parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SELLER:

HAGERS5, LLC

By: _____

Name:

Title:

Date signed: _____

BUYER:

THE CITY OF HAGERSTOWN

By: _____

Name:

Title:

Date signed: _____

ESCROW AGENT:

Lincoln Title & Settlement Services

By: _____

Name:

Title:

Exhibit A
(Survey)

Exhibit B
(Parking Agreement)

"3 of 3"

PARKING SPACE RENTAL AGREEMENT

THIS PARKING SPACE RENTAL AGREEMENT (this "Agreement") made effective as of the 10th day of March 2022 (the "Effective Date") by and between **HAGER5, LLC**, a Maryland limited liability company, 222 E. Oak Ridge Drive, Suite 100, Hagerstown, MD 21740 ("Lessor"), and **BCP HAGERSTOWN LP**, a Delaware limited partnership, 9909 Deerfield Pond Drive, Great Falls, VA 22066 ("Lessee").

RECITALS:

A. Lessor is the owner of that certain parcel of real property improved with a paved surface parking lot and located at 50-58 W. Antietam Street, Hagerstown, Maryland 21740 (Tax Map 306, Parcel 2064, Tax ID No. 03-022595) (the "Parking Lot").

B. Lessee is or shall be as of the Effective Date of this Agreement the fee simple owner of a portion of that certain parcel of real property and improvements known as Tax Map 306, Parcel 2250 (Tax ID No. 03-018180), such portion of said parcel being located and commonly known as 51-53 West Washington Street, Hagerstown, Maryland 21740 ("Lessee's Property").

C. Lessor and Lessee have agreed to the terms of this Agreement in order to allow Lessee and the tenants, licensees and occupants of Lessee's Property to use the Parking Lot on a month to month, as needed basis for vehicular parking in accordance with the terms indicated herein.

NOW THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound, Lessor and Lessee agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated by reference as a substantive part of this Agreement.

2. Use of Parking Lot. Commencing on the Effective Date and pursuant to this Agreement, Lessee shall have a non-exclusive right in common with Lessor and other tenants and daily users of the Parking Lot to use on a 24 hours per day, 7 days per week basis up to, but no more than thirty three (33) parking spaces on a month to month term for the parking of passenger vehicles by Lessee and Lessee's tenants, licensees, employees, agents, representatives or contractors, as well as the employees, agents, representatives, contractors or invitees of licensees, tenants or subtenants occupying Lessee's Property (collectively, the "Lessee Users" and each, individually, a "Lessee User"). Neither Lessee nor the Lessee Users shall have any permanent rights in or to the Parking Lot or the parking spaces located therein by virtue of this Agreement, and Lessee acknowledges and agrees that Lessee shall not, at any time, claim any greater rights in the Parking Lot or the parking spaces located therein than those rights granted under this Agreement. The Parking Lot shall be used solely for the parking of passenger vehicles which shall be required to display either a dashboard/review mirror placard or vehicle sticker as determined and required by Lessor. Lessee shall be solely responsible for complying with all rules and regulations set forth by Lessor, as may be supplemented or modified from time to time in Lessor's sole and absolute discretion, and shall also comply with any and all state, county and local requirements with respect to the use of the Parking Lot for the intended purpose including but not limited to using the Parking Lot only for vehicles that are up-to-date with all State and local registration having current insurance that is legal under the State where the vehicle is registered. No repairs of any type shall be

allowed in the Parking Lot and, if needed, the vehicle must be towed to a location that allows such activities. Lessee acknowledges that Lessor has the right, in its sole and absolute discretion, from time to time to change the area, location and arrangement of the Parking Lot; to remove areas from common use; to erect or remove buildings or other structures; and/or to make any changes or improvements to the Parking Lot (collectively, "**Lessor Modifications**"), including, without limitation, constructing a parking deck to replace the existing surface lot, expanding and/or subdividing the Parking Lot, granting permits, leasehold interests, licenses and easements to others, and remodeling or changing the surfaces of the Parking Lot.

3. Term. The initial term of this Agreement shall commence on the date of substantial completion of the renovation of the Lessee's Property which shall be confirmed by the date of the Use and Occupancy Permit confirming completion of Lessee's renovation work (but in no event later than one (1) year after the Effective Date) and shall expire ten (10) years thereafter (the "**Initial Term**"). Upon providing Lessor no less than NINETY (90) days advance written notice prior to the expiration of the Initial Term or then current Renewal Term, as the case may be, Lessee shall have the right and option to extend and renew the term of this Agreement for two (2) additional periods of five (5) years each (each a "**Renewal Term**"). Notwithstanding the foregoing, the rental period for each parking space shall be on a month to month basis. The "**Term**" of this Agreement shall include the Initial Term and also any Renewal Term(s) elected by Lessee.

4. Relocation. In the event that the Parking Lot requires renovation, repair or maintenance or, as provided herein above, Lessor elects to undertake any Lessor Modifications that makes access to the Parking Lot or the parking spaces located therein temporarily impossible or impractical, subject to providing Lessee and Lessee Users with no less than ninety (90) days advance written notice, the Lessor shall have the right to provide commercially reasonable alternative parking spaces at the same rental rate required herein in another parking facility (that is owned and operated by the Lessor or the City of Hagerstown) located within the two (2) block radius surrounding Lessee's Property which is bounded by Church Street, Walnut Street, Baltimore Street, and Locust Street as shown and illustrated on the street map attached hereto and incorporated herein as **Exhibit A**, for the benefit of the Lessee and the Lessee Users under provisions consistent with this Agreement until the renovation, repair, maintenance or Lessor Modification is completed. Upon completion of the renovation, repair, maintenance or Lessor Modification of the Parking Lot, the Parking Lot, as may have been renovated, repaired or modified, shall again be made available to Lessee and Lessee Users in accordance with this Agreement.

5. Rental Fee. Subject to providing Lessor with no less than thirty (30) days advance written notice of the initial number of parking spaces needed and any change in that number thereafter, for each parking space used by Lessee or Lessee Users, Lessee shall pay Lessor, in advance on the first (1st) day of each month during the Initial Term of this Agreement, a rental fee in the amount of TWENTY-FIVE AND 00/100 DOLLARS (\$25.00) per space per month. The rental fee during each Renewal Term, if any, shall be equal to the rate per space per month that equals (a) the then fair market rent (per space per month) for equivalent or comparable parking spaces in Hagerstown, Maryland as determined by (i) mutual agreement of the parties; (ii) mutually agreed upon appraiser; or (iii) the average of each party's independently obtained M.A.I. appraisal report.

6. Maintenance. Lessor shall be responsible for snow and ice removal from the Parking Lot, as necessary, and shall perform at its sole cost and expense such maintenance and repairs to the Parking Lot as are necessary due to normal wear and tear. However, Lessee shall be responsible for

and shall perform at its sole cost and expense such maintenance and repairs to the Parking Lot as are necessary due to damage caused by the negligence or willful misconduct of Lessee or any Lessee User.

7. Release of Lessor. Lessor shall not be liable for any damage done to any vehicle or personal property taken from any vehicle while located on or utilizing the Parking Lot in anyway. All liability to the vehicle and personal property therein shall be the sole responsibility of the Lessee or Lessee User. Lessor shall also not be liable for any damage either to the person or the property of the Lessee or Lessee Users, or for the loss of or damage to any property of the same by theft or from any other cause whatsoever. Lessee, on its behalf and on behalf of the Lessee Users, hereby indemnifies and agrees to hold harmless the Lessor and its affiliates from any and all claims, losses, damages and causes of action arising from or related to (i) the death, bodily injury or damage to any person or property on or about the Parking Lot; or (ii) Lessee's use or use by the Lessee Users of the Parking Lot, and for all damages and monies paid out by Lessor in settlement of any claim or judgment, as well as for all expenses and reasonable attorney's fees incurred in connection therewith.

8. Assignment and Subletting. Except for the Lessee Users, Lessee shall not assign this Agreement or any part thereof, or permit any other person to use the Parking Lot or any part thereof, without the prior written consent of Lessor, which consent may be granted or withheld in Lessor's sole discretion. This Agreement shall benefit and bind Lessor and Lessee and the permitted personal representatives, heirs, successors or assigns thereof, including without limitation any successor in interest to Lessor as the owner of the Parking Lot and any successor in interest to Lessee as the owner of the Lessee's Property.

9. Environmental Compliance. Lessee shall not cause or permit any hazardous substance, material or waste (as defined by applicable environmental law, rule or regulation) to be brought upon or used in or about, or disposed upon, the Parking Lot. Lessee shall cause the Parking Lot to be used in compliance with all applicable environmental laws, rules and regulations. Any failure of Lessee or Lessee Users to comply with the covenants contained in this Paragraph shall be covered by the indemnification provisions below and shall be subject to all other rights and remedies available to Lessor.

10. ENTIRE AGREEMENT. Except as otherwise provided herein, this Agreement and any exhibit, rider or addendum that may be attached hereto by mutual consent of the parties sets forth all the promises, agreements, conditions and understandings between Lessor and Lessee relative to the Parking Lot, and there are no promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth.

11. MISCELLANEOUS

(A) No modification or waiver of any of the terms of this Agreement shall be valid unless made in writing, and signed by the parties. Except as otherwise expressly provided herein, all provisions of this Agreement shall supersede any prior agreement between the parties regarding the subject matter herein, whether or not in writing.

(B) Any written notice required in this Agreement shall be provided to the other party(s) at the addresses indicated above or as may be updated by the parties from time to time in accordance with this provision.

(C) This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland without regard to its conflict of laws provisions.

(D) No provision of this Agreement shall be interpreted for or against any party hereto by reason that said party or his or her legal representative drafted all or any part hereof.

(E) Should any provision of this Agreement be found, held, or deemed to be unenforceable, voidable or void, as contrary to law or public policy under the laws of the State of Maryland, the parties intend that the remaining provisions of this Agreement shall nevertheless continue in full force and be binding upon the parties, their heirs, personal representatives, executors, and assigns.

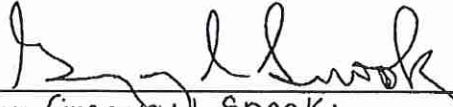
(F) This Agreement may be executed in duplicate or one or more counterparts, each of which shall be deemed an original, and off of which, when taken together, shall constitute one and the same agreement. Facsimile and PDF copies of original signatures and electronic signatures shall have the same force and effect as original signatures.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound to the terms of this Agreement, have caused this Agreement to be executed the day and year first above written.


LESSOR:

HAGER5, LLC

By: 
Name: Gregory V. Snook
Title: Authorized Member

LESSEE:

BCP HAGERSTOWN LP

By: 
Name: P. Anthony Brown
Title: Authorized Person

After recording, return to:
JD Law Company, Inc.
11125 Bemisderfer Road
Greencastle, PA 17225

EXHIBIT "A"

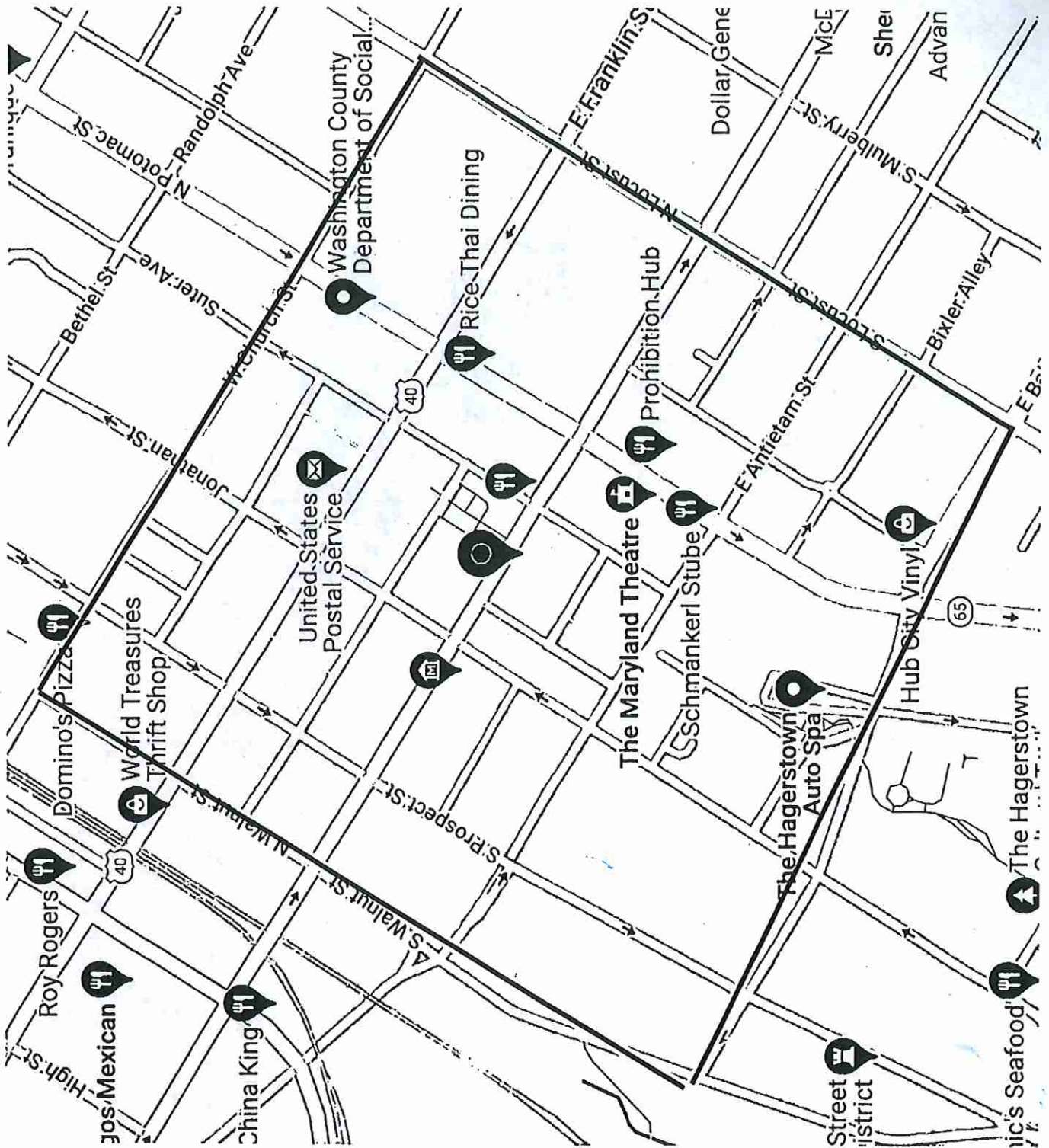


Exhibit C
(Short Term Parking Permits)

EXHIBIT C

Parking Leases to be Assigned by Seller and Assumed by Purchaser:

The parking provision, or its equivalent, contained in the State of Maryland Standard Lease prepared on February 26, 2013 between Columbia Bank and the State of Maryland for the benefit of the Public Defender's Office and commencing January 1, 2014, which was assigned to Hager5, LLC by Columbia Bank.

February 22, 2021 Parking Lot Lease between Hager5, LLC and The Maryland Theatre.

Parking Permits Purchaser Shall Honor as Long as Parking Lot Usable:

Cannon Coffee – 4 permits for full time access at the rate of \$30 per month per permit

Washington County Human Resources Department – 3 permits for full time access at the rate of \$45 per month per permit

Leiter's Catering – 8 permits for full time access at the rate of \$35 per month per permit

Western Maryland Consortium Employees:

Pam Kunkle – full time access at the rate of \$40 per month

Jeanette Warner – full time access at the rate of \$40 per month

Wilma Moore – full time access at the rate of \$40 per month

Nettie Schuble – full time access at the rate of \$40 per month

Angie Detrick – full time access at the rate of \$40 per month

Misty Cabbage – full time access at the rate of \$40 per month

Kimberly McMurtrie – full time access at the rate of \$40 per month

Public Defender's Office Employees:

Lauren Villa – full time access at the rate of \$45 per month

Cheryl Cogar – part time access at the rate of \$20 per month

Angela Oetting – part time access at the rate of \$20 per month

Kimberly Vocke – part time access at the rate of \$20 per month

Rasheeda Lawrence – part time access at the rate of \$20 per month

Mary Hotovy – part time access at the rate of \$20 per month

Jim Zuna – part time access at the rate of \$20 per month

District County Employees:

Jessica Crawford – full time access at the rate of \$40 per month

Jacey Rohrer – full time access at the rate of \$40 per month

Erin Alvarez – full time access at the rate of \$40 per month

Kristina Wolfensberger – full time access at the rate of \$40 per month

Exhibit D
(Assignment and Assumption Agreement)

EXHIBIT D

ASSIGNMENT AND ASSUMPTION OF LEASES

For good and valuable consideration, the receipt of which is hereby acknowledged, **HAGER5, LLC, a Maryland limited liability company** (“Assignor”), hereby assigns, conveys and delivers to **THE CITY OF HAGERSTOWN, a Maryland municipal corporation** (“Assignee”) (the “Assignment”), and Assignee’s successors and assigns, all of Assignor’s right, title and interest in and to the following with regard to the real property, paved surface parking lot and other improvements located at 50-58 West Antietam Street in Washington County, Maryland consisting of +/- 38,225.1 square feet: (i) the Parking Space Rental Agreement with BCP Hagerstown LP, a Delaware limited partnership, dated March 10, 2022 and recorded among the Land Records of Washington County at Book 6950, Page 386 and (ii) the short term leases for monthly parking permits and privileges listed and identified on **Exhibit A** attached hereto and incorporated herein (hereinafter collectively referred to as the “**Existing Leases**”). Assignee hereby accepts the Assignment and agrees to assume, fulfill, perform and discharge all the various commitments, obligations and liabilities of Assignor under and by virtue of the Existing Leases, accruing or obligated to be performed from and after the date hereof.

Assignee hereby indemnifies and agrees to hold harmless Assignor from and against any and all claims, liabilities, losses, damages, causes of action and expenses (including without limitation, court costs through all appeals and reasonable attorneys’ fees and disbursements) incurred in connection with or arising under the obligations of the landlord under the Existing Leases from and after the date.

Assignor hereby indemnifies and agrees to hold harmless Assignee from and against any and all claims, liabilities, losses, damages, causes of action and expenses (including, without limitation, court costs through all appeals and reasonable attorneys’ fees and disbursements) incurred in connection with or arising under the obligations of the landlord under the Existing Leases which accrued prior to the date hereof, whether or not Assignor was provided notice of such claims prior to the date hereof.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement shall be governed by, and construed under, the laws of the State of Maryland.

This Assignment and Assumption of Leases may be executed in counterparts, all of which when taken together shall constitute one original fully executed Assignment and Assumption of Leases.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed the within instrument as of the _____ day of _____ 2022.

“ASSIGNOR”

HAGER5, LLC,
a Maryland imited liability company

By: _____
Name:
Title:

“ASSIGNEE”

THE CITY OF HAGERSTOWN
a Maryland Municipal Corporation

By: _____
Name:
Title:

Exhibit A

State of Maryland Standard Lease prepared on February 26, 2013 between Columbia Bank and the State of Maryland for the benefit of the Public Defender's Office and commencing January 1, 2014, which was assigned to Hager5, LLC by Columbia Bank, or its equivalent.

February 22, 2021 Parking Lot Lease between Hager5, LLC and The Maryland Theatre.