

PARKING GARAGE LEASE

BETWEEN

**VIRGINIA@5, LLC AND SP2 301 E VIRGINIA, LLC,
as Landlord**

AND

**CITY OF MCKINNEY, TEXAS,
as Tenant**

DRAFT

TABLE OF CONTENTS

	Page
ARTICLE I. BASIC TERMS AND DEFINITIONS	1
1.01 Basic Terms	1
1.02 Consents or Approvals.....	2
1.03 Exhibits	2
ARTICLE II. GRANT OF LEASE; TERM AND TERMINATION RIGHTS	2
2.01 Grant	2
2.02 Initial Term	2
2.03 Holding Over	2
2.04 Tender of Possession	2
ARTICLE III. USE AND ACCEPTANCE OF THE PROPERTY	3
3.01 Use of the Property	3
3.02 Acceptance of the Property	3
ARTICLE IV. RENT	3
4.01 Base Rent	3
4.02 Payment of Rent.....	3
4.03 Late Charges and Interest.....	3
4.04 Payment of Taxes and Insurance	3
4.05 Net Lease	4
4.06 Security Deposit.....	4
ARTICLE V. CONDUCT OF BUSINESS.....	4
5.01 Compliance with Laws and with Agreements	4
5.02 Landlord Access and Entry.....	4
5.03 Signage and Displays.....	4
ARTICLE VI. MAINTENANCE	5
6.01 Maintenance and Repair of Property	5
ARTICLE VII. LIABILITY, RELEASE.....	5
7.01 Limitations on Landlord's Liability.....	5
ARTICLE VIII. TRANSFERS	6
8.01 Assignment and Subletting by Tenant	6
8.02 Disposition by Landlord	6
8.03 Tenant's Option to Purchase.....	6
ARTICLE IX. DEFAULT.....	7
9.01 Tenant Default	7
9.02 Landlord Remedies	7
9.03 Remedies Cumulative	8
9.04 Waiver of Damages; Attorneys' Fees	8
9.05 Landlord's Default.....	8
ARTICLE X. COVENANT OF QUIET ENJOYMENT	9

TABLE OF CONTENTS
(continued)

	Page
10.01 Covenant of Quiet Enjoyment	9
ARTICLE XI. SURRENDER OF PREMISES	9
11.01 Surrender of Property.....	9
ARTICLE XII. FORCE MAJEURE	9
12.01 Relief from Performance.....	9
ARTICLE XIII. NOTICES	9
13.01 Addresses for Notices	10
ARTICLE XIV. CONDEMNATION AND CASUALTY	10
14.01 Condemnation.....	10
14.02 Casualty	11
ARTICLE XV. GENERAL	11
15.01 Agency	11
15.02 Headings	11
15.03 Inurement	11
15.04 Provisions Separately Valid.....	11
15.05 Waiver Negated	11
15.06 Subordination and Attornment.....	11
15.07 Certificate by Tenant	12
15.08 Recordation of Memorandum of Lease	12
15.09 Governing Law, Venue and Waiver of Jury Trial	12
15.10 Construed Covenants	12
15.11 Independent Covenants.....	12
15.12 Time of the Essence.....	12
15.13 Survival of Covenants.....	13
15.14 Entire Agreement.....	13
15.15 Counterparts.....	13
15.16 Waiver of Sovereign Immunity	13
15.17 Execution and Delivery by Electronic Transmission.....	13

THIS PARKING GARAGE LEASE (the "Lease") is entered into this ___ day of _____ 2017 (the "Effective Date") by and among VIRGINIA@5, LLC, a Texas limited liability company and SP2 301 E VIRGINIA, LLC, a Texas limited liability company (collectively "Landlord") and the CITY OF MCKINNEY, TEXAS, a Texas home rule city ("Tenant").

RECITALS:

A. Landlord is the owner of the Property (all capitalized terms not otherwise defined herein shall have the meaning set forth in **Exhibit "B"** attached hereto).

B. Tenant desires to lease the Property for the purpose of operating a 310 space, multi-deck public parking garage (the "Parking Garage") on the Property.

C. Landlord and Tenant have entered into that certain Parking Garage Development Agreement dated January 5, 2017 (the "Development Agreement").

D. Landlord and Tenant desire to enter into this Lease with respect to the Property upon the terms and conditions set forth herein.

NOW THEREFORE in consideration of the mutual covenants herein contained and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

ARTICLE I.

BASIC TERMS AND DEFINITIONS

1.01 Basic Terms.

(a) **Property:** means that certain real property described in **Exhibit "A"** attached hereto and all Improvements constructed thereon or forming a part thereof.

(b) **Term:** Sixty (60) months commencing upon the Commencement Date, which date shall be the earlier of (i) the date Landlord delivers possession of the Property to Tenant under Section 2.04, or (ii) April 4, 2018.

(c) **Base Rent:** means on a monthly basis, \$86,405.84. Notwithstanding the stated Base Rent, the Base Rent shall be adjusted downward prior to the beginning of the Term if the actual (contracted) construction cost components, in aggregate and shown on **Exhibit "C"** are less than \$7,018,250.00. The adjusted Base Rent shall be derived from the same formula by which the Agreed Purchase Price was calculated. The Base Rent shall not be increased. Notwithstanding the items shown on Exhibit "C", the overall project costs include an owner's consideration of \$400,000.00 which shall be fixed in any Base Rent adjustment.

(d) **Permitted Uses:** The Property may be used by Tenant for the operation of a public parking garage.

(e) **Security Deposit:** None.

1.02 **Exhibits.** The following Exhibits to this Lease constitute part of this Lease:

- Exhibit "A" Legal Description of the Property
- Exhibit "B" Defined Terms
- Exhibit "C" Construction Cost Components
- Exhibit "D" Commencement Letter
- Exhibit "E" Agreed Purchase Price
- Exhibit "F" Subordination, Non-Disturbance and Attornment

ARTICLE II.

GRANT OF LEASE; TERM AND TERMINATION RIGHTS

2.01 **Grant.** Subject to the terms of this Lease, Landlord hereby demises and leases to Tenant and Tenant hereby accepts the Property by lease from Landlord for the Term.

2.02 **Term.** The Term shall begin on the Commencement Date and unless earlier terminated in accordance with the terms of this Lease, shall end on the last day of the last calendar month of the Term.

2.03 **Holding Over.** If Tenant remains in possession of the Property after an early termination of this Lease by Landlord resulting from a Tenant default, then Tenant will be deemed to be occupying the Property as a tenant at will, subject to all of the terms and conditions of this Lease, provided that Tenant shall pay to Landlord rental in an amount equal the greater of (i) the monthly Base Rent (without proration) then in effect or (ii) a daily base rental equal to one hundred and fifty percent (150%) of the daily Base Rent then in effect, for so long as Tenant holds over and continues in possession of the Property.

2.04 **Tender of Possession.** Upon Landlord's performance of its obligations under the Development Agreement and completion of construction and receipt of a Certificate of Occupancy for the Parking Garage pursuant thereto, and specifically in accordance with the bidding/procurement requirements of Paragraph 1(b) and (c) thereof, Landlord shall deliver possession of the Property to Tenant. Within ten days after request by Landlord, Tenant shall execute and deliver to Landlord a letter substantially in the form of **Exhibit "D"** hereto confirming (i) the Commencement Date and the expiration date of the Term, (ii) that Tenant has accepted the Property, and (iii) the monthly amount of Base Rent, however, the failure of the Parties to execute such letter shall not defer the Commencement Date or otherwise invalidate this Lease. Time is of the essence in Landlord's required delivery of possession to Tenant by the Commencement Date.

ARTICLE III.

USE AND ACCEPTANCE OF THE PROPERTY

3.01 **Use of the Property.** No portion of the Property shall be used for any purpose or use other than the Permitted Use, without the prior written consent of Landlord. Landlord shall have no rights to reserve parking spaces, parking use, or otherwise control or the operation of the public parking garage.

3.02 **Acceptance of the Property.** Tenant accepts the Property in its "As Is" condition and subject to all Applicable Laws. **TENANT IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY**

OF LANDLORD OR LANDLORD'S AGENTS OR EMPLOYEES WITH RESPECT THERETO, EXCEPT AS EXPRESSLY SET FORTH HEREIN, AND TENANT WAIVES ANY CLAIM OR ACTION AGAINST LANDLORD IN RESPECT OF THE CONDITION OF THE PROPERTY EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD. EXCEPT AS EXPRESSLY SET FORTH HEREIN, LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE PROPERTY OR ANY PART THEREOF, EITHER AS TO THE USE OF THE PROPERTY PURSUANT TO SECTION 3.01, THE PROPERTY'S FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY TENANT.

ARTICLE IV.

RENT

4.01 Base Rent. Commencing on the first day of the first (1st) month after the Commencement Date, Tenant shall pay to Landlord the Base Rent in monthly installments, in advance, on the first day of each and every month. Notwithstanding anything to the contrary set forth herein, upon Landlord's receipt of a Certificate of Occupancy, Tenant shall pay to Landlord the sum of Three Million and No/100 Dollars (\$3,000,000.00), which amount shall constitute an initial payment of rent and shall be in addition to the monthly Base Rent obligation described above. Upon receipt of the first development permit allowing ground disturbance for the Property, the Tenant shall escrow the referenced prepayment with the title company named in Section 8.04(b) under the terms of an Escrow Agreement acceptable to Tenant whereby the funds are (i) interest-bearing, (ii) not subject to any Lender, and released to Landlord, less interest paid to Tenant, only upon receipt of a Certificate of Occupancy. Upon receipt of this initial payment of rent in the amount of \$3,000,000.00, this rent shall be deemed fully earned and not refundable to Tenant under any circumstances, subject to Tenant's rights and remedies under Section 9.05 below.

4.02 Payment of Rent. Tenant shall pay all Rent without demand at the time and in the manner as specified in this Lease, and without any set-off or abatement whatsoever, to Landlord by check at the notice address for Landlord set forth herein, or via wire transfer pursuant to instructions provided by Landlord to Tenant. With respect to any lease month which does not fall entirely within the Term, Tenant shall pay as Base Rent for such lease month, the pro rata share of Rent as determined by this Lease based upon the number of days of the Term falling within such partial lease month.

4.03 Late Charges and Interest. If Tenant fails to pay any installment of Base Rent on the date the same became due and payable and such failure continues for a period of fifteen (15) days thereafter, without waiving any other right of action of Landlord, Tenant shall pay as Additional Rent, a late payment service charge equal to five percent (5.0%) of the amount overdue. In addition to the foregoing, if Tenant fails to pay any installment of Rent or any other amount due under this Lease on the date the same became due and payable and such failure continues for a period of thirty (30) days thereafter, without waiving any other right of action of Landlord, Tenant shall pay as Additional Rent, interest accruing at the Default Rate on such delinquent amount from the date past due until paid.

4.04 Payment of Taxes and Insurance. From and after the Commencement Date, Tenant shall pay Landlord, on a 30-day reimbursed basis, an amount equal to: (i) all Taxes that are imposed or assessed by any government or other taxing authority having jurisdiction and which relate to or are attributable to the Property and/or the Parking Garage; and (ii) all premiums paid by Landlord for property insurance applicable to the Parking Garage.

4.05 Net Lease. It is the purpose and intent of Landlord and Tenant that this Lease be deemed and construed to be a “True Net Lease” so that Landlord shall receive all rentals and other sums specified hereunder during the Term, free from any and all charges, costs, assessments, expenses, deductions and/or set-offs of any kind or nature whatsoever, and Landlord shall not be expected or required to pay any such charge, assessment or expense, or be under any obligation or liability hereunder, except as expressly set forth herein. All charges, costs, expenses and obligations of any nature relating to utilities or the maintenance of the Parking Garage, including all alterations, repairs and replacements which may arise or become due during the Term shall be paid by Tenant, except as otherwise herein expressly set forth herein. If the Parking Garage is accessed solely through elevators located within Landlord’s adjacent office building, Tenant agrees to pay a portion of Landlord’s elevator CAM expenses, not to exceed ten percent (10%) of the actual costs of elevator maintenance/service/utilities, for such elevators.

4.06 Intentionally omitted.

ARTICLE V.

CONDUCT OF BUSINESS

5.01 Compliance with Laws and with Agreements. Tenant and Landlord shall observe and comply with all Applicable Laws applicable to Property, its construction, and the use thereof by Tenant. Tenant agrees to comply with any requirements reasonably imposed by Landlord’s insurance carrier as a condition to the issuance of insurance coverage for the Property and the Parking Garage.

5.02 Landlord Access and Entry

(a) Tenant shall permit access to and entry into the Property by Landlord or its agents for the purposes of:

(i) inspecting and viewing the Property, carrying out tests, inspections and investigations on, in or under the Property and obtaining any information and any document and taking extracts therefrom in order to determine the extent of compliance: (A) by Tenant with all Applicable Laws; and (B) by Tenant with this Lease;

(ii) curing any default of Tenant to the extent such right is provided in this Lease;
and

(iii) showing the Property to mortgagees.

(b) The exercise of Landlord’s rights of access for the purposes set forth in this **Section 5.02** shall be conditional upon Landlord not unreasonably interfering with Tenant’s operations at the Property or the physical security of the Property. Landlord’s right of access for such purposes shall be exercised by Landlord upon twenty-four (24) hours prior written notice to Tenant and shall be exercised during normal business hours. Notwithstanding the foregoing, Landlord shall at all times and for all purposes have full and free access to the Property in cases of Emergency.

5.03 Signage and Displays. Tenant shall have the right to install and maintain signage in and around the Property related to the Tenant’s use. All such signage or displays shall be in compliance with all Applicable Laws. The cost of installing, maintaining, changing and removing all such signage or displays shall be borne by Tenant. Notwithstanding the foregoing, in no event shall Tenant display signs, billboards or advertising media on or outside of the Property that does not directly relate to the City of

McKinney. Upon the sooner termination of this Lease, at Landlord's request, Tenant, at its expense, shall remove all signage installed by Tenant in and around the Property.

ARTICLE VI.

MAINTENANCE AND REPAIR OF PARKING GARAGE AND PROPERTY

6.01 Maintenance and Repair of Parking Garage and the Property. Tenant shall, at no cost to Landlord, keep, operate, maintain, repair and replace, save and except any capital expenditures not approved in advance by Tenant, and ensure that the Parking Garage is kept, operated, maintained, repaired and replaced in a state of good repair and condition and, at a minimum, in accordance with all Applicable Laws. Landlord shall, at no cost to Tenant, keep, operate, maintain, repair and replace, and ensure that the Property, less and except the Parking Garage, is kept, operated, maintained, repaired and replaced in a state of good repair and condition and, at a minimum, in accordance with all Applicable Laws.

ARTICLE VII.

LIABILITY, RELEASE

7.01 Limitations on Landlord's Liability. Tenant acknowledges and agrees that Landlord shall not be liable or responsible to Tenant for any Injury to any Person or for the loss of or damage to any property of Tenant or any other Person in respect of any occurrence during the Term and any period of time in which Tenant is in possession of the Property, arising from any act or omission in, upon, at, or relating to the Property, or any part thereof or from the ownership, occupancy or use of the Property in any such case, except to the extent such Injury or damage to property results from any negligence or willful misconduct of Landlord. Notwithstanding the foregoing provisions of this **Section 7.01**, Tenant agrees that Landlord will not be liable in any event for any Claims whatsoever advanced by any Person for any Injury and Damages of any nature which are caused, result or arise from or are contributed to by reason of: (a) the condition of or temporary interruption, suspension, discontinuance or failure, in whole or in part, of any Utilities or service serving the Property; or (b) any act or omission by or on behalf of Landlord, acting reasonably, in curing or attempting to cure any default of Tenant under this Lease or in responding to an Emergency.

ARTICLE VIII.

TRANSFERS

8.01 Assignment and Subletting by Tenant. Tenant shall not have the right without the prior written consent of Landlord to assign this Lease or any interest in the Lease, or to sublet the Property, any part thereof, or any right or privilege pertinent to the Lease or the Property; however, Tenant may utilize a third-party management company to manage the operation of the Parking Garage and Tenant may assign this Lease to the McKinney Economic Development Corporation or the McKinney Community Development Corporation without the prior written consent of Landlord; provided that, Tenant shall give Landlord at least thirty days' advance notice of such assignment.. In the event Tenant utilizes a third-party management company to manage the operations of the Parking Garage, Tenant shall cause the management company to maintain general liability insurance with Landlord named as an additional insured, providing coverage in such amounts as Landlord shall reasonably approve.

8.02 Disposition by Landlord. Landlord shall be liable for the performance of Landlord's covenants and obligations expressly set forth in this Lease only during the period in which Landlord holds an interest in the Property, and in the event of any bona fide sale, lease or other disposition by Landlord of Landlord's interest in the Property, and provided that Landlord's successor-in-interest shall have assumed the performance of Landlord's covenants and obligations from and after the disposition of Landlord's interest in the Property, Landlord shall thereupon and without further agreement be relieved of all liability with respect to the performance of such covenants and obligations, and Tenant shall thereafter look solely to Landlord's successor-in-interest in and to this Lease. Simultaneous with the execution hereof, Landlord shall obtain any mortgagee's execution of a Subordination, Non-Disturbance and Attornment agreement in substantially the form shown on **Exhibit "F"** attached hereto. Tenant shall immediately upon request, and without charge to Landlord, attorn in writing to such successor-in-interest, provided always that Landlord's successor-in-interest shall have agreed in writing to be bound by the terms of this Lease.

8.03 Tenant's Early Option to Purchase. At any time after the Commencement Date and continuing through the Term, Tenant shall have the option to purchase the Property, on the following terms and conditions:

(a) Tenant must give written notice to Landlord of the exercise of the early option under the Section 8.03 prior to expiration or termination of this Lease;

(b) the purchase price shall be payable in cash at closing and shall be in an amount equal to the sum of (i) the amount designated as the "Loan Balance" shown on the amortization schedule attached as Exhibit D (the "Agreed Purchase Price") determined as if each monthly payment of Rent received by Landlord hereunder was the corresponding monthly loan payment shown in such amortization schedule, plus (ii) an amount equal to the interest that would accrue on such Loan Balance amount from the date of the last payment of Rent by Tenant to the date of closing calculated using the interest rate set forth in such amortization schedule. By way of example only, assuming Tenant has paid the first six (6) monthly payments of Rent at the time of the closing and twenty (20) days have elapsed since the last payment of monthly Rent by Tenant, then the Agreed Purchase Price would be equal to the sum of (i) \$4,300,597.25 (the Loan Balance amount set forth in the amortization schedule after 6 monthly payments) plus (ii) \$11,193.33 (interest on the amount of \$4,300,597.25 at 4.75% per annum for 20 days);

(c) the closing on the sale of the Property will occur no later than sixty (60) days after Tenant's notice of exercise of the option, such closing to take place at Secured Title of Texas, 2000 N. McDonald Street, Suite 200, McKinney, Texas with the title policy issued through Secured Title of Texas;

(d) conveyance of the Property will be by special warranty deed, subject only to those matters affecting title to the Property as of the Effective Date of this Lease (excluding monetary liens, deeds of trust, or encumbrances, all of which shall be fully released at closing);

(e) all title insurance premiums and related charges, and all other closing costs shall be the responsibility of Tenant;

(f) it shall be a condition precedent to Tenant's right to exercise the option that Tenant shall not then be in default under the terms of this Lease;

(g) The option to purchase, if not previously exercised, shall automatically expire and be of no further force or effect upon the occurrence of the Automatic Option to Purchase under Section 8.04 below.

8.04 Automatic Option to Purchase. On the fifth (5th) anniversary of the Commencement Date, the Tenant's Option to Purchase shall automatically be exercised, and the Property shall be transferred to Tenant on the following terms and conditions:

- (a) Tenant shall have made all Base Rent and Additional Rent payments under the Lease;
- (b) the closing on the transfer of the Property will occur no later than thirty (30) days after the end of the Term, such closing to take place at Secured Title of Texas, 2000 N. McDonald Street, Suite 200, McKinney, Texas with the title policy issued through Secured Title of Texas;
- (c) conveyance of the Property will be by special warranty deed, subject only to those matters affecting title to the Property as of the Effective Date of this Lease (excluding monetary liens, deeds of trust or encumbrances, all of which shall be fully released at closing);
- (d) all title insurance premiums and related charges, and all other closing costs shall be the responsibility of Tenant.

8.05 Confirmation of Tenant's Failure to Exercise Purchase Option. In the event Tenant fails to properly exercise the Early Option to Purchase in accordance with the requirements of **Section 8.03** or does not satisfy all of the requirements for exercise of the Automatic Option to Purchase in accordance with **Section 8.04**, Tenant, upon Landlord's request, shall deliver written confirmation of the termination of this Lease and the options to purchase.

ARTICLE IX.

DEFAULT

9.01 Tenant Default.

- (a) The occurrence of any of the following events during the Term shall constitute an "Event of Default" for purposes of this Lease:
 - (i) Tenant fails to pay Base Rent when due under this Lease on the first day of each calendar month and such failure continues for ten (10) days after written notice to Tenant from Landlord of non-receipt of such Base Rent; provided that, Landlord shall not be required to give written notice of non-receipt more than two (2) times in any consecutive twelve (12) month period and any failures thereafter shall constitute an event of default if the payment is not made when due, without the necessity of Landlord giving any notice of non-receipt;
 - (ii) Tenant fails to pay any additional rent when due and such failure continues for ten (10) days after written notice to Tenant from Landlord of non-receipt of such additional rent; provided that, Landlord shall not be required to give written notice of non-receipt more than two (2) times in any consecutive twelve (12) month period and any failures thereafter shall constitute an event of default if the payment is not made when due, without the necessity of Landlord giving any notice of non-receipt;
 - (iii) Tenant fails to vacate the Property upon any early termination of the Term;
 - (iv) Tenant fails to comply with the requirements of **Section 8.01**;
 - (v) Tenant fails to time deliver the certificate required by **Section 15.07**;

(vi) Tenant fails to comply with any other term, provision, or covenant of this Lease, other than those matters set forth above in subsections (i) through (vi), and does not cure the failure within thirty (30) days after written notice of the failure to Tenant; provided that, if such failure cannot reasonably be cured by Tenant within such 30-day period, Tenant will not be in default as long as Tenant commences the cure with such 30-day period and thereafter diligently pursues the cure to completion;

9.02 Landlord Remedies. Upon the occurrence of any Event of Default, Landlord shall have the option to pursue any one or more of the following remedies:

(a) Landlord may terminate this Lease and forthwith repossess the Property and be entitled to recover forthwith as damages a sum of money equal to the total of (i) the unpaid Rent earned at the time of termination, plus interest thereon at the Default Rate from the due date, (ii) the balance of the Base Rent for the remainder of the Term less the fair market value of the Property as of the date of the Event of Default and (iii) any other sum of money and damages owed by Tenant to Landlord.

(b) Landlord may enter upon the Property, without being liable for prosecution or any claim for damages for such entry, and do whatever Tenant is obligated to do under the terms of this Lease to correct the default. Tenant agrees to reimburse Landlord on demand for any expenses that Landlord may incur in effecting compliance with Tenant's obligations under this Lease in this manner, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action.

9.03 Remedies Cumulative. Landlord may, from time to time, resort to any or all of the rights and remedies available upon the occurrence of an Event of Default by Tenant, either by any provision of this Lease or by law or in equity, all of which rights are intended to be cumulative and not alternative. Any provision contained in this Lease as to certain rights and remedies is not to be interpreted as excluding any other or additional rights and remedies available to Landlord at law or in equity.

9.04 Waiver of Damages; Attorney Fees. Notwithstanding anything in this Lease to the contrary, neither Party shall have any liability to the other for indirect, incidental, consequential or special damages. Tenant shall look solely to the interest of Landlord in the Property for satisfaction of any claim against Landlord arising out of or related to the terms of this Lease and Tenant shall not seek to impose liability upon Landlord for satisfaction of any claim against Landlord. If any action shall be instituted by either Landlord or Tenant for the enforcement or interpretation of any of its rights or remedies in or under this Lease, either party may additionally seek and recover reasonable attorneys' fees and court costs as determined by the Court.

9.05 Landlord's Default. Landlord shall not be in default hereunder unless Landlord fails to perform the obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance, then Landlord shall not be in default if Landlord commences the cure within such thirty (30) day period and thereafter diligently pursues the cure to completion. In the case of a default by Landlord, Tenant's sole remedy shall be to cure the same and seek reimbursement from Landlord (and should Landlord fail to promptly reimburse Tenant, Tenant shall have the right to pursue an action at law against Landlord for monetary damages). Nothing herein contained shall be interpreted to mean that Tenant is excused from paying Base Rent, Additional Rent and all other monetary obligations due hereunder as a result of any default by Landlord. Notwithstanding the foregoing, Landlord's failure to deliver possession of the Property to Tenant under Section 2.04 by April 4, 2018 shall automatically reduce the Base Rent payable to Landlord by \$2,000.00/day for every day of delay in delivery of the Property to Tenant, except for delays caused by Force Majeure events.

ARTICLE X.

COVENANT OF QUIET ENJOYMENT

10.01 Covenant of Quiet Enjoyment. Landlord represents and warrants throughout the Term, that upon payment of the Rent hereby reserved at the times and in the manner herein provided, and upon the observance and performance of each and every covenant, condition, restriction and stipulation by Tenant to be observed and performed, Tenant shall and may peaceably and quietly possess and enjoy the Property without any interruption from or by Landlord or any other Persons lawfully claiming by, through or under Landlord, save and except as expressly provided in this Lease.

ARTICLE XI.

SURRENDER OF PREMISES UPON EARLY TERMINATION

11.01 Surrender of Property. Upon any early termination of this Lease under a right exercised by Landlord, Tenant shall peaceably surrender and yield up possession of the Property to Landlord.

ARTICLE XII.

FORCE MAJEURE

12.01 Relief from Performance. Except (a) to the extent set forth in this Lease to the contrary, or (b) if this Lease provides that time is of the essence with regard to any period for a Party's performance under this Lease, whenever and to the extent that either Party is bona fide unable to fulfill or is delayed or restricted in fulfilling any of its obligations under this Lease by an event of Force Majeure, such party shall be relieved from the fulfillment of the part of its obligations affected by Force Majeure for the period of the delay caused by such Force Majeure, and the period for the performance of such obligation, including any applicable dates under this Lease, provided that the Party so delayed shall forthwith notify the other after becoming aware of the commencement of any event which is the cause of Force Majeure and the steps proposed to be taken to overcome the event which is the cause of Force Majeure.

ARTICLE XIII.

NOTICES

13.01 Addresses for Notices

(a) Whenever in this Lease, it is required or permitted that notice or demand be given or served by either Party to or on the other, such notice or demand shall be in writing and shall be validly given or sufficiently communicated and shall be deemed to be received if delivered (i) by hand, (ii) prepaid overnight courier, or (iii) forwarded by electronic mail transmission; provided in the case of delivery by the means set forth in clause (iii) of this **Section 13.01(a)**, a copy of such transmittal is delivered the next Business Day after transmission by one of the means set forth in clause (i) or clause (ii) of this **Section 13.01(a)**, to the Parties' respective addresses as follows:

To Landlord:	Virginia@5, LLC 11520 N. Central Expressway, Suite 138 Dallas, Texas 75243 Telephone: 214-566-4246 Email: santiago@metromanagement.com
--------------	--

and

SP2 301 E Virginia, LLC
2000 N. McDonald Street, Suite 100
McKinney, Texas 75071
Telephone: 469-424-5900
Email: martin.sanchez@thesanchezgroup.biz

With a copy to: Robert G. Buchanan, Jr.
5501 LBJ Freeway, Suite 220
Dallas, Texas 75240
Telephone: 214-550-5950
Email: bob@rgblegal.com

To Tenant: City of McKinney
Box 517
McKinney, Texas 75070
Attn: Paul G. Grimes
Telephone: 972-547-7510
Email: pgrimes@mckinneytexas.org

With a copy to: Mark S. Houser
740 E. Campbell, Suite 800
Richardson, Texas 75081
Telephone: 214-747-6120
Email: mhouser@bhlaw.net

(b) Such addresses may be changed from time to time by either Party giving notice as above provided. If any question arises as to whether any notice was communicated by one Party to the other, a notice shall be deemed to have been effectively communicated or given on the day delivered, delivery was rejected or sent by electronic transmission, as the case may be.

ARTICLE XIV.

CONDEMNATION AND CASUALTY

14.01 Condemnation. If there is Taking of the all or any portion of the Property, the Term shall cease and terminate on the date of the Taking as fully and completely as if such date were the originally stated date for expiration of the Term. Landlord shall receive the entire award from any Taking, and Tenant shall have no claim to that award or for the value to Landlord of any unexpired term of this Lease. To the extent allowed by law, Tenant agrees that there shall be no Tenant-initiated condemnation of any portion of the Property during the Term.

14.02 Casualty. If the Parking Garage, or any structures or improvements on the Property, should be damaged or destroyed by fire, tornado, or other casualty, Tenant shall give immediate written notice of the damage or destruction to Landlord, including a description of the damage and, as far as known to Tenant, the cause of the damage. Landlord shall, at its sole cost and risk, proceed immediately to rebuild or repair the Parking Garage to substantially the condition in which it existed upon commencement of the Term. If the Parking Garage is untenable in whole or in part following such damage, the Base Rent payable during the period in which it is untenable shall be adjusted equitably.

ARTICLE XV.

GENERAL

15.01 Agency. The Parties specifically agree that nothing in this Lease shall be construed to establish any partnership, joint venture or relationship of agent and principal as between Landlord and Tenant.

15.02 Headings. Any note appearing as a heading in this Lease has been so inserted for convenience of reference only and of itself cannot define, limit or expand the scope or meaning of the Lease or any of its provisions.

15.03 Inurement. This Lease and everything herein contained shall inure to the benefit of and be binding upon the successors and assigns of Tenant and Landlord, as the case may be, and nothing herein shall restrict the ability of Landlord to transfer or assign its interests herein.

15.04 Provisions Separately Valid. If any covenant, obligation, agreement, term or condition of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such covenant, obligation, agreement, term or condition to Persons or circumstances other than those in respect of which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation, agreement, term and condition of this Lease shall be separately valid and enforceable to the fullest extent permitted by Applicable Law.

15.05 Waiver Negated. The waiver or acquiescence by either Party of any breach of any covenant, term or condition of this Lease shall not be deemed to be a waiver of the covenant, term or condition or any subsequent or other breach of any covenant, term or condition of this Lease.

15.06 Subordination and Attornment. Tenant accepts this lease subject to any deeds of trust, security interests, or mortgages that might now or later constitute a lien upon the Property. In connection with any mortgages or deeds of trust creating a lien upon Landlord's fee interest in the Property, Tenant shall execute and deliver to Landlord, within twenty (20) days after written request, any reasonable instrument that is required by any mortgagee for the purpose of subjecting and subordinating this Lease to the lien of any such mortgage or deed of trust, provided that the lienholder (hereinafter called "Lender") agrees for itself, its successors and assigns, and any purchaser at foreclosure, in such instrument that: (i) Tenant's peaceful possession of the Property will not be disturbed so long as no uncured event of default exists under this Lease; (ii) this Lease shall remain in full force and effect during the Term as long as no uncured Event of Default exists under the Lease; (iii) this Lease will not be terminated by any foreclosure or deed-in-lieu of foreclosure. Such instrument may include provisions requiring Tenant to agree that: (i) upon the sale, transfer or foreclosure of Landlord's fee interest in the Property that the Lease will remain in full force and that Tenant will attorn to Lender pursuant to the terms of this Lease, (ii) upon any default of this Lease by Landlord or any action or omission by Landlord or any third party that would give Tenant the right to terminate this Lease immediately, or after the passage of time, Tenant shall provide notice to Lender and provide Lender an opportunity to cure such default, (iii) Lender shall not be liable for any previous act or omission of Landlord.

15.07 Certificate by Tenant. Within twenty (20) days after any request therefor by Landlord, Tenant shall in each instance execute and deliver, in a form to be supplied by Landlord, a status statement to Landlord or to any assignee, mortgagee, purchaser or any other Person designated by Landlord, stating (if such is the case):

(a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification

agreements), and that this Lease constitutes the whole of the legal relationships between Landlord and Tenant;

(b) whether or not there are any existing claims or defaults either by Tenant or Landlord under this Lease with respect to which a notice of default has been served, and specifying the nature and extent thereof;

(c) whether or not there are any set-offs, defenses or counterclaims against enforcement of the obligations to be performed by Tenant under this Lease; and

(d) such other matters relating to this Lease as Landlord may reasonably request.

Tenant's failure to deliver the statement within twenty (20) days shall be conclusive upon Tenant that (i) this Lease is in full force and effect without modification except as may be represented by Landlord, (ii) there are no claims or defaults with respect to which a notice of default has been served, (iii) there are no set-offs, defenses or counterclaims against enforcement of the obligations to be performed by Tenant under this Lease, and (iv) any other matters relating to this Lease as are designated by Landlord acting reasonably are true.

15.08 Recordation of Memorandum of Lease. Landlord and Tenant have executed and recorded in the real property records a memorandum of the terms and conditions of this Lease.

15.09 Governing Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State. The parties agree to venue of any action arising under or in connection with this Lease in courts of the Collin County, Texas.

15.10 Construed Covenants. Each obligation or agreement of Landlord or of Tenant contained in this Lease, even though not expressed as a covenant, is to be construed as a covenant as though the words imparting such covenant were used in each separate provision hereof.

15.11 Independent Covenants. Each covenant contained in this Lease is considered for all purposes to be a separate and independent covenant, and a breach by either Landlord or Tenant will not discharge the other from its obligation to perform each of its covenants.

15.12 Time of the Essence. Time shall be strictly of the essence hereof.

15.13 Survival of Covenants. All obligations of Tenant and Landlord which by their nature require all or part of their performance or fulfillment after the expiration or termination of this Lease shall (whether specifically provided for in this Lease or not) survive the expiration or early termination of this Lease.

15.14 Entire Agreement. This Lease shall be deemed to constitute the entire agreement between Landlord and Tenant hereto with respect to the subject matter thereof and shall supersede all previous negotiations, representations and documents in relation hereto made by any Party.

15.15 Counterparts. This Lease may be executed and delivered in counterparts and such counterparts, taken together, shall constitute one and the same instrument.

15.16 Waiver of Sovereign Immunity. To the fullest extent permitted under applicable law, Tenant waives immunity from suit and immunity from liability in connection with Tenant's default in the performance of its obligations under this Lease.

15.17 Execution and Delivery by Electronic Transmission. This Lease may be executed and delivered by electronic transmission of a pdf file. The Party executing and delivering this Lease by electronic transmission shall provide the other Party with the original document as soon as may be convenient following such execution and delivery.

[SIGNATURES ON FOLLOWING PAGE]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DRAFT

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

LANDLORD:

VIRGINIA@5, LLC,
a Texas limited liability company

By: _____
Santiago Jorba, Manager

SP2 301 E VIRGINIA, LLC,
a Texas limited liability company

By: _____
J. Martin Sanchez, Manager

TENANT:

CITY OF MCKINNEY, TEXAS
a Texas municipal corporation

By: _____
Paul G. Grimes, City Manager

ATTEST:

City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT "B"

DEFINED TERMS

Certain terms in the Lease have been given specially defined meanings. The defined terms may be used in the singular or plural or in varying tenses or forms but such variations shall not affect their defined meaning so long as they are written with initial capital letters. The terms defined in this Exhibit "A" for all purposes of this Lease shall have the following meanings unless the context expressly or by necessary implication otherwise requires:

"Additional Rent" means any and all sums of money or charges, if any required to be paid to Landlord by Tenant pursuant to this Lease except Base Rent, whether or not designated as "Additional Rent".

"Applicable Law(s)" means all federal, State or municipal laws, statutes, ordinances, governmental rules or regulations, orders and decrees, now in force or which may hereafter be enacted or promulgated by any governing authority having jurisdiction over the Property, specifically including, without limitation, zoning, building, environmental and fire laws, ordinances, codes, regulations, rules and orders and the Americans with Disabilities Act, to the extent the same are applicable to the Property or the use or operation thereof.

"Approvals" means any approvals, permits, licenses, certifications, authorizations, regulatory registrations, consents, waivers, finding of suitability, agreements, entitlements or any other approval or permit by or from any Approving Authority or any other federal, state, and/or local regulatory agency.

"Approving Authorities" shall mean any applicable governmental or quasi-governmental authority having jurisdiction over the Property.

"Award" shall mean the condemnation award and/or proceeds of a Taking, including any interest earned on the Award.

"Business Day" means any day which is not a Saturday, Sunday or a governmental holiday observed in the State.

"Claims" means any claims, losses, suits, proceedings, actions, causes of action, demands, judgments, executions, liabilities and responsibilities of any nature for any Damages or for any Injuries.

"Commencement Date" shall be the date defined in Section 1.01(b) of the Lease.

"Costs" means all expenses, losses, charges and payments relating to an event and including any professional, consultant, and reasonable attorneys' fees of professionals and consultants retained by a Party.

"Damages" means and includes any damages but shall not mean, include or extend to indirect, incidental, special, exemplary or consequential damage.

"Default Rate" means the lesser of (a) eighteen percent (18%), or (b) the maximum rate allowed by Applicable Law, per annum, as enforceable against a political subdivision under Texas law.

"Effective Date" means the date of mutual execution and delivery of the Lease by the Parties which shall be contemporaneously with the award of a construction contract for the Improvements.

“**Emergency**” means an event posing imminent threat of injury to Persons or material damage to property.

“**Force Majeure**” means (a) acts of God, (b) war, riot and other civil unrest, (c) governmental or quasi-governmental action or inaction, save and except lawful regulatory actions of the City of McKinney, (d) material and adverse site conditions that are reasonably unknown by Tenant as of the date of Effective Date, and (e) any other event beyond the reasonable control of Tenant, provided, however, that no Force Majeure event shall excuse the payment of Rent.

“**Impairment**” shall have the meaning ascribed thereto under general accepted accounting principles as modified by the Uniform System of Accounts.

“**Improvements**” means and includes the Parking Garage and all physical improvements thereto, or any repairs and restoration of existing Improvements, together with all fixed equipment (excluding removable trade fixtures), and alterations from time to time made, constructed, erected, or installed in, on, or to the Parking Garage.

“**Injury**” means any personal injury or bodily injury, or both, including death resulting therefrom, and whether the injury occurs before or after the end of the Term or after any period of time in which when Tenant is occupying the Property.

“**Lease**” means this lease, including any schedules and attachments hereto, and any written amendments thereto as may be made from time to time.

“**Parties**” means Landlord and Tenant and “**Party**” means either Landlord or Tenant, as the context shall require.

“**Person**” means any individual, company, corporation, partnership, limited liability company, association, firm, trust, sole proprietorship, or other entity or organization, including a government or government agency, authority or entity or political subdivision or agency or instrumentality thereof, however designated or constituted.

“**Rent**” means all Base Rent and Additional Rent payable pursuant to this Lease.

“**State**” means the state of Texas.

“**Taking**” means a taking during the Term of all or any part of the Property, or any interest therein or right accruing thereto including any right of access, by or on behalf of any Approving Authority or by any entity granted the authority to take property through the exercise of a power of eminent domain granted by statute, any agreement that conveys to the condemning authority all or any part of the Property as the result of, or in lieu of, or in anticipation of the exercise of a right of condemnation or eminent domain, or a change of grade affecting the Property. The date of the Taking shall be deemed to be the date that title vests in the condemning authority or its designee.

“**Taxes**” means all real property taxes, capital levies, rates, business taxes, license fees, excise, room, hotel, occupancy, gross receipts, entertainment, admission, tourists, sales and use taxes or similar taxes, impositions, levies, charges or assessments, including, without limitation, any fine, penalty, interest and cost relating thereto. Taxes due not include any income taxes or personal property taxes payable by Landlord.

“**Utilities**” means the sanitary sewers, storm sewers, water mains, hydrants, and electrical, telephone, communication, cable TV and natural gas lines.

“**Value of the Property**” means the fair market value of the Property determined by a licensed MAI appraiser practicing in commercial real estate matters in the State for the previous ten (10) years as if (a) the Property were encumbered by this Lease, and unencumbered by any lien representing a monetary obligation, and (b) no Taking was pending, threatened or under consideration pending, threatened or under consideration. The Value of the Property shall be determined immediately prior to title vesting in the condemning authority or its designee.

DRAFT

EXHIBIT C

CONSTRUCTION COST COMPONENTS

Architecture	\$150,000
General Conditions	\$480,000
Demolition	\$97,500
Excavation	\$175,000
Utilities	\$65,000
Concrete	\$4,000,000
Masonry	\$50,000
Metal / stairs / railings	\$50,000
Thermal/Moisture	\$55,000
Doors / Hardware	\$62,000
Finishes	\$412,500
Accessories	\$25,000
Sign / Access Control	\$56,250
Crane	\$155,000
Plumbing	\$152,000
Electrical	\$165,000
Lighting	\$33,000
Contingency	\$310,000
Builder Fee	\$395,000
Insurance	\$55,000
Engineering	\$75,000

EXHIBIT "D"

CONFIRMATION OF COMMENCEMENT DATE

_____, ____
[TENANT'S ADDRESS]

City of McKinney

Re: Lease Agreement (the "Lease") dated _____, 20__, between VIRGINIA@5, LLC and SP2 301 E VIRGINIA, LLC ("Landlord"), and THE CITY OF MCKINNEY, TEXAS ("Tenant"). Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease.

Ladies and Gentlemen:

Landlord and Tenant agree as follows:

1. **Delivry of Possession of the Property.** Tenant has accepted possession of the Property pursuant to the Lease.
2. **Commencement Date.** The Commencement Date of the Lease is _____, 20__.
3. **Expiration Date.** The Term is scheduled to expire on the last day of the 60th full calendar month of the Term, which date is _____, 20__.
4. **Base Rent.** Monthly Base Rent is: _____.
5. **Binding Effect.** Except as modified hereby, the Lease shall remain in full effect and this letter shall be binding upon Landlord and Tenant and their respective successors and assigns. If any inconsistency exists or arises between the terms of this letter and the terms of the Lease, the terms of this letter shall prevail.

Please indicate your agreement to the above matters by signing this letter in the space indicated below and returning an executed original to us.

(balance of page intentionally blank)

Sincerely,

VIRGINIA@5, LLC

By: _____
Name: _____
Title: _____

SP2 301 E VIRGINIA, LLC

By: _____
Name: _____
Title: _____

Agreed and accepted:

CITY OF MCKINNEY, TEXAS
a Texas municipal corporation

By: _____
Paul G. Grimes, City Manager

ATTEST:

City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

EXHIBIT "E"

AGREED PURCHASE PRICE

PMT NO	DATE	ELAPSED DAYS	ANNUITY FACTOR	PAYMENT	INTEREST	PRINCIPAL	LOAN BALANCE
0	2018-03-01	0	1	0.00	0.00	0.00	4,600,000.00
1	2018-04-01	30	0.996057273293	86,405.84	18,208.33	68,197.51	4,531,802.49
2	2018-05-01	30	0.99213009168	86,405.84	17,938.38	68,467.46	4,463,335.03
3	2018-06-01	31	0.988088535103	86,405.84	18,256.28	68,149.56	4,395,185.47
4	2018-07-01	30	0.984192772047	86,405.84	17,397.61	69,008.23	4,326,177.24
5	2018-08-01	31	0.980183549058	86,405.84	17,695.27	68,710.57	4,257,466.67
6	2018-09-01	31	0.976190658102	86,405.84	17,414.22	68,991.62	4,188,475.05
7	2018-10-01	30	0.972341805124	86,405.84	16,579.38	69,826.46	4,118,648.59
8	2018-11-01	31	0.968380858418	86,405.84	16,846.42	69,559.42	4,049,089.17
9	2018-12-01	30	0.964562797345	86,405.84	16,027.64	70,378.20	3,978,710.97
10	2019-01-01	31	0.960633539327	86,405.84	16,274.03	70,131.81	3,908,579.16
11	2019-02-01	31	0.956720287595	86,405.84	15,987.17	70,418.67	3,838,160.49
12	2019-03-01	28	0.953198747777	86,405.84	14,179.87	72,225.97	3,765,934.52
PMT NO	DATE	ELAPSED DAYS	ANNUITY FACTOR	PAYMENT	INTEREST	PRINCIPAL	LOAN BALANCE
13	2019-04-01	30	0.949440545617	86,405.84	14,906.82	71,499.02	3,694,435.50
14	2019-05-01	30	0.945697161021	86,405.84	14,623.81	71,782.03	3,622,653.47
15	2019-06-01	31	0.941844754352	86,405.84	14,817.66	71,588.18	3,551,065.29
16	2019-07-01	30	0.938131317886	86,405.84	14,056.30	72,349.54	3,478,715.75
17	2019-08-01	31	0.934309731553	86,405.84	14,228.91	72,176.93	3,406,538.82
18	2019-09-01	31	0.930503712894	86,405.84	13,933.69	72,472.15	3,334,066.67
19	2019-10-01	30	0.926834991054	86,405.84	13,197.35	73,208.49	3,260,858.18
20	2019-11-01	31	0.923059421615	86,405.84	13,337.82	73,068.02	3,187,790.16
21	2019-12-01	30	0.919420050581	86,405.84	12,618.34	73,787.50	3,114,002.66
22	2020-01-01	31	0.915674686758	86,405.84	12,737.14	73,668.70	3,040,333.96
23	2020-02-01	31	0.911944580108	86,405.84	12,435.81	73,970.03	2,966,363.93
24	2020-03-01	29	0.908468426614	86,405.84	11,350.46	75,055.38	2,891,308.55
PMT NO	DATE	ELAPSED DAYS	ANNUITY FACTOR	PAYMENT	INTEREST	PRINCIPAL	LOAN BALANCE
25	2020-04-01	30	0.904886583886	86,405.84	11,444.76	74,961.08	2,816,347.47
26	2020-05-01	30	0.901318863385	86,405.84	11,148.04	75,257.80	2,741,089.67
27	2020-06-01	31	0.89764723684	86,405.84	11,211.82	75,194.02	2,665,895.65
28	2020-07-01	30	0.894108059106	86,405.84	10,552.50	75,853.34	2,590,042.31
29	2020-08-01	31	0.890465806606	86,405.84	10,593.99	75,811.85	2,514,230.46
30	2020-09-01	31	0.886838391241	86,405.84	10,283.90	76,121.94	2,438,108.52
31	2020-10-01	30	0.883341829832	86,405.84	9,650.85	76,754.99	2,361,353.53
32	2020-11-01	31	0.87974343481	86,405.84	9,658.59	76,747.25	2,284,606.28
33	2020-12-01	30	0.876274846875	86,405.84	9,043.23	77,362.61	2,207,243.67
34	2021-01-01	31	0.872705240025	86,405.84	9,028.24	77,377.60	2,129,866.07

35	2021-02-01	31	0.869150174381	86,405.84	8,711.74	77,694.10	2,052,171.97
36	2021-03-01	28	0.865950966643	86,405.84	7,581.64	78,824.20	1,973,347.77
PMT NO	DATE	ELAPSED DAYS	ANNUITY FACTOR	PAYMENT	INTEREST	PRINCIPAL	LOAN BALANCE
37	2021-04-01	30	0.86253675864	86,405.84	7,811.17	78,594.67	1,894,753.10
38	2021-05-01	30	0.859136011926	86,405.84	7,500.06	78,905.78	1,815,847.32
39	2021-06-01	31	0.855636222101	86,405.84	7,427.32	78,978.52	1,736,868.80
40	2021-07-01	30	0.852262682317	86,405.84	6,875.11	79,530.73	1,657,338.07
41	2021-08-01	31	0.848790891794	86,405.84	6,778.97	79,626.87	1,577,711.20
42	2021-09-01	31	0.845333244011	86,405.84	6,453.28	79,952.56	1,497,758.64
43	2021-10-01	30	0.842000326054	86,405.84	5,928.63	80,477.21	1,417,281.43
44	2021-11-01	31	0.838570340426	86,405.84	5,797.07	80,608.77	1,336,672.66
45	2021-12-01	30	0.835264086749	86,405.84	5,291.00	81,114.84	1,255,557.82
46	2022-01-01	31	0.83186154197	86,405.84	5,135.58	81,270.26	1,174,287.56
47	2022-02-01	31	0.82847285785	86,405.84	4,803.16	81,602.68	1,092,684.88
48	2022-03-01	28	0.82542337704	86,405.84	4,036.86	82,368.98	1,010,315.90
PMT NO	DATE	ELAPSED DAYS	ANNUITY FACTOR	PAYMENT	INTEREST	PRINCIPAL	LOAN BALANCE
49	2022-04-01	30	0.822168958247	86,405.84	3,999.17	82,406.67	927,909.23
50	2022-05-01	30	0.818927370738	86,405.84	3,672.97	82,732.87	845,176.36
51	2022-06-01	31	0.815591375459	86,405.84	3,457.01	82,948.83	762,227.53
52	2022-07-01	30	0.812375721561	86,405.84	3,017.15	83,388.69	678,838.84
53	2022-08-01	31	0.809066415182	86,405.84	2,776.64	83,629.20	595,209.64
54	2022-09-01	31	0.805770589646	86,405.84	2,434.57	83,971.27	511,238.37
55	2022-10-01	30	0.802593656422	86,405.84	2,023.65	84,382.19	426,856.18
56	2022-11-01	31	0.799324198416	86,405.84	1,745.96	84,659.88	342,196.30
57	2022-12-01	30	0.796172681552	86,405.84	1,354.53	85,051.31	257,144.99
58	2023-01-01	31	0.792929380129	86,405.84	1,051.79	85,354.05	171,790.94
59	2023-02-01	31	0.789699290669	86,405.84	702.67	85,703.17	86,087.77
60	2023-03-01	28	0.78679252938	86,405.82	318.05	86,087.77	0.00
PMT NO	DATE	ELAPSED DAYS	ANNUITY FACTOR	PAYMENT	INTEREST	PRINCIPAL	LOAN BALANCE
			TOTALS	\$5,184,350.38	\$584,350.38		

EXHIBIT F

FORM SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Brown & Hofmeister, L.L.P.
740 E. Campbell, Suite 800
Richardson, Texas 75081
Attention: Mark S. Houser

Article XVI. **THIS SUBORDINATION, NONDISTURBANCE, AND ATTORNMENMENT AGREEMENT** (the “Agreement”) is made as of April __, 2017, by and between the CITY OF MCKINNEY, TEXAS, a Texas home-rule municipal corporation (“Tenant”), and LegacyTexas Bank, a Texas chartered bank (“Beneficiary”).

RECITALS

Article XVII. WHEREAS, VIRGINIA@5, LLC, a Texas limited liability company, and SP2 301 E. VIRGINIA, LLC, a Texas limited liability company (together, “Borrower”), are the owners of certain real property more particularly described in **Exhibit “A”** attached hereto (the “Property”); and

Article XVIII. WHEREAS, Tenant has determined a need for more public parking in the area which currently exceeds existing parking capacity; and

Article XIX. WHEREAS, Borrower desires to construct a parking garage on a portion of the Property containing approximately 310 parking spaces and then lease the parking garage to Tenant with an option for Tenant’s purchase of the parking garage; and

Article XX. WHEREAS, Borrower and Tenant have entered into that certain Parking Garage Development Agreement dated January 5, 2017; and

Article XXI. WHEREAS, Borrower has encumbered the Property by entering into a Deed of Trust (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the “Deed of Trust”) in favor of Beneficiary; and

Article XXII. WHEREAS, pursuant to that certain Parking Garage Lease, dated as of March 22, 2017 (the “Lease”), Borrower as Landlord under the Lease has granted Tenant the right to occupy the Property; and

Article XXIII. WHEREAS, Tenant and Beneficiary desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

Article XXIV.NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant and Beneficiary agree as follows:

1. Definitions.

Article XXV.The following terms shall have the following meanings for purposes of this Agreement:

1.1 Construction Obligation. “Construction Obligation” means any obligation of Borrower as Landlord under the Lease to construct the parking garage, make, pay for, or reimburse Tenant for any alterations or other repairs, demolition, or other improvements or work at the Property as required under the Lease. “Construction Obligations” shall not include (a) reconstruction or repair following fire, casualty, or condemnation, or (b) day-to-day maintenance and repairs.

1.2 Foreclosure Event. “Foreclosure Event” means (a) any foreclosure under the Deed of Trust, whether judicial or nonjudicial, (b) any other exercise by Beneficiary of rights and remedies (whether under the Deed of Trust or under applicable law, including bankruptcy law) by the holder of the Deed of Trust, as a result of which Successor Landlord becomes owner of the Property, or (c) delivery by Borrower to Beneficiary (or its designee or nominee) of a deed or other conveyance of Borrower’s interest in the Property in lieu of any of the foregoing.

1.3 Former Landlord. “Former Landlord” means Borrower and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 Offset Rights. “Offset Rights” means any right(s) or alleged right(s) of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or other applicable law) from Borrower’s breach or default under the Lease.

1.5 Rent. “Rent” means any base rent under the Lease.

1.6 Successor Landlord. “Successor Landlord” means any party, including without limitation Beneficiary, that becomes the owner of the Property as the result of a Foreclosure Event.

1.7 Termination Right. “Termination Right” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Borrower’s breach or default under the Lease.

2. Subordination.

The Lease shall be, and shall at all times remain, subject and subordinate to the Deed of Trust, the lien imposed by the Deed of Trust, and all advances made under the Deed of Trust.

3. Nondisturbance, Recognition and Attornment.

3.1 No Exercise of Deed of Trust Remedies Against Tenant. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Beneficiary shall not name or join Tenant as a defendant in any exercise of Beneficiary's rights and remedies arising upon a default under the Deed of Trust unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Borrower or prosecuting such rights and remedies. In the latter case, Beneficiary may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 Nondisturbance and Attornment. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, then when Successor Landlord takes title to the Property (a) Successor Landlord shall not terminate or disturb Tenant's possession of the Property, except in accordance with the terms of the Lease and this Agreement, (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement), including Tenant's option to purchase rights described in Section 9 below and Landlord's Construction Obligation, (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement, and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. In the event of any such attornment, Tenant further waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligation of Tenant thereunder as a result of any such foreclosure proceeding or trustee's sale.

3.3 Further Documentation. The provisions of this Section 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant shall, however, execute and deliver at any time and from time to time, upon the request of Borrower or Successor Landlord or of any holder(s) of any indebtedness or other obligations secured by the Deed of Trust, any instrument or certificate which, in the reasonable judgment of Successor Landlord or such holder(s), may be necessary or appropriate.

4. Protection of Successor Landlord.

Notwithstanding anything to the contrary in the Lease or the Deed of Trust, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Any Offset Rights that Tenant may have against any Former Landlord relating to any event(s) or occurrence(s) before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Rights otherwise available to Tenant because of events occurring after the date of attornment, or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and which constitutes a breach of Successor Landlord's obligations as landlord under the Lease.

4.2 Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment, which shall expressly include Tenant's prepayment of \$3,000,000.00 to Former Landlord, which Successor Landlord expressly recognizes hereunder.

4.3 Payment; Security Deposit. Any obligation (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant, or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Beneficiary or delivered to or credited by the receiver. This subsection is not intended to apply to any payments that constitute "Construction Obligations."

4.4 Modification, Amendment, or Waiver. Any modification or amendment of the Lease, or any waiver of any of the terms of the Lease, made without Beneficiary's written consent.

4.5 Surrender. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Tenant and Borrower as landlord, unless effected unilaterally by Tenant pursuant to a specific provision in the Lease.

4.6 Construction Obligations. Any Construction Obligation of Former Landlord.

5. New Lease.

Article XXVI. Upon written request of either Beneficiary or Tenant, Beneficiary and Tenant shall execute a new lease for the Property upon the same terms and conditions as in the Lease, which new lease shall cover any unexpired term of the Lease existing at the time of such request.

6. Estoppel Certificates.

Article XXVII. Whenever reasonably requested by Beneficiary, Tenant from time to time shall execute and deliver to or at the direction of Beneficiary, and without charge to Beneficiary, one or more estoppel certificates, setting forth whether Tenant has exercised any renewal option or options and any other information that Beneficiary may reasonably require to confirm the current status of the Lease, including without limitation confirmation that the Lease is and remains subordinated as provided in this Agreement.

7. Exculpation of Successor Landlord.

Article XXVIII. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Property from time to time, including insurance and condemnation proceeds and Successor Landlord's interest in the Lease (collectively, "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and

assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

8. Beneficiary's Right to Cure.

8.1 Notice to Beneficiary. Notwithstanding anything to the contrary in the Lease or this Agreement or the Lease, before exercising any Termination Right or Offset Right, Tenant shall provide Beneficiary with prior written notice of the breach or default by Borrower as Landlord giving rise to same (the "Default Notice") and thereafter, the opportunity to cure such breach or default as provided for below.

8.2 Beneficiary's Cure Period. After Beneficiary receives a Default Notice, Beneficiary shall have a period of thirty (30) days beyond the time available to Borrower under the Lease in which to cure the breach or default by Borrower. Beneficiary shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Borrower as landlord, except to the extent that Beneficiary agrees or undertakes otherwise in writing.

8.3 Extended Cure Period. In addition, as to any breach or default by Borrower the cure of which requires Beneficiary to possess and control the Property, provided that Beneficiary undertakes within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure such breach or default within the period permitted by this paragraph, Beneficiary's cure period shall continue for such additional time (the "Extended Cure Period") as Beneficiary may reasonably require to obtain possession and control of the Property and to thereafter cure the breach or default with reasonable diligence and continuity. So long as any receiver of the Property has been appointed and is continuing to serve, Beneficiary shall be deemed to have possession and control of the Property.

9. Tenant's Options to Purchase.

9.1 Tenant's Early Option to Purchase. In the event that Successor Landlord takes title to the Property and so long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Tenant shall have the right to exercise against Successor Landlord the option to purchase the Property, under the terms and conditions set forth in Section 8.03 of the Lease.

9.2 Tenant's Automatic Option to Purchase. In the event that Successor Landlord takes title to the Property and so long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, on the fifth (5th) anniversary of the Commencement Date, Tenant's option to purchase shall automatically be exercised, and the Property shall be transferred to Tenant under the terms and conditions set forth in Section 8.04 of the Lease.

10. Miscellaneous.

10.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth below, subject to change by notice under this Section 10.1. Notices shall be effective the next business day after being sent by overnight courier service, and three (3) business days after being sent by certified mail (return receipt requested).

Article XXIX.If to Tenant:

City of McKinney, Texas
Box 517
McKinney, Texas 75070
Attention: Paul G. Grimes

With a copy to:

Mark S. Houser
740 E. Campbell, Suite 800
Richardson, Texas 75081

Article XXX.If to Beneficiary:

LegacyBank Texas

Attention: _____

With a copy to:

10.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Beneficiary assigns the Deed of Trust, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

10.3 Entire Agreement. This Agreement constitutes the entire agreement between Beneficiary and Tenant regarding the subordination of the Lease to the Deed of Trust and the rights and obligations of Tenant and Beneficiary as to the subject matter of this Agreement.

10.4 Interaction with Lease and with Deed of Trust. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment. This Agreement supersedes, and constitutes full compliance

with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by, the holder of the Deed of Trust.

10.5 Beneficiary's Rights and Obligations. Except as expressly provided for in this Agreement, Beneficiary shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Beneficiary under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

10.6 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the laws of the State of Texas.

10.7 Amendments. This Agreement may be amended, discharged, or terminated, of any of its provisions waived, only by a written instrument executed by the party to be charged.

10.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.9 Party's Representations. Each party represents that it has full authority to enter into this Agreement, and its entry into this Agreement has been duly authorized by all necessary actions.

Article XXXI. IN WITNESS WHEREOF, this Agreement has been duly executed by Beneficiary and Tenant as of the date first above written.

"Tenant":

CITY OF MCKINNEY, TEXAS,
a Texas home-rule municipal corporation

By: _____

PAUL G. GRIMES
City Manager

"Beneficiary":

LEGACY TEXAS BANK,
a Texas chartered bank

By: _____

Name: _____

Title: _____

STATE OF TEXAS)

COUNTY OF COLLIN)

On March _____, 2017, before me, the undersigned, personally appeared PAUL G. GRIMES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the

DRAFT