

**THE CITY OF MCKINNEY, TEXAS,
VIRGINIA@5, LLC, AND
SP2 301 E VIRGINIA, LLC**

**PARKING GARAGE DEVELOPMENT
AGREEMENT**

THIS PARKING GARAGE DEVELOPMENT AGREEMENT (this “Agreement”) is entered into effective as of the __ day of _____, 2016 (the “Effective Date”), by and among **VIRGINIA@5, LLC**, a Texas limited liability company (“Virginia@5”), **SP2 301 E VIRGINIA, LLC**, a Texas limited liability company (“SP2”), and the **CITY OF MCKINNEY, TEXAS**, a Texas home rule city (“City”).

WHEREAS, Virginia@5 and SP2 are the owners (individually, an “Owner” and collectively, the “Owners”) of the property described in Exhibit “A” attached hereto (the “Property”);

WHEREAS, City has determined a need for more public parking in the area which currently exceeds existing parking capacity;

WHEREAS, Owners are willing to construct a parking garage on a portion of the Property providing for approximately 300 parking spaces and then lease the parking garage to the City with an option for the City’s purchase of the parking garage, all on the terms and conditions more specifically set forth herein;

NOW, THEREFORE, for and in consideration of TEN DOLLARS AND NO/100 (\$10.00), mutual covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owners agree as follows:

1. Design, Construction and Lease of the Parking Garage.

- (a) Retention of Architect. Owners shall select and retain an architectural firm (the “Architect”) which is recognized in the DFW region as a specialist in parking garage design, for the purpose of designing a multi-story parking garage containing approximately 300 parking spaces and related improvements (the “Parking Garage”) to be constructed by Owners pursuant to the terms of this Agreement. City shall have the right to disapprove the selection of the Architect if the Architect does not satisfy the criteria above.
- (b) Design of Parking Garage. Upon City’s approval of the Architect, Owners shall cause the Architect to prepare a schematic design for the purpose of obtaining preliminary cost estimates to construct the Parking Garage. City shall have the continuing right of access and input to the Architect’s work, including the right to contact Architect (utilizing a conference call with Owners’ representative) and the

right to be included in all Architect/Owners written, in-person and oral communications. The proposed location of the Parking Garage on the Property is depicted in Exhibit "B" attached hereto. The schematic design shall be subject to the reasonable approval of Owners and City. In the event Owners and City are not able to agree upon the schematic design of the Parking Garage within seventy-five (75) days after the Effective Date, this Agreement will automatically terminate, whereupon the costs of the Architect through the date of termination shall be shared equally (50/50) by Owners and City. Upon approval of the schematic design of the Parking Garage by Owners and City, Owners will request preliminary cost estimates from contractors based on the approved schematic design. Upon receipt of the preliminary cost estimates, City will determine whether to proceed with the completed design and construction of the Parking Garage. Upon receipt of the preliminary cost estimates, should City decide not to proceed with the design and construction of the Parking Garage or should Owners and City be unable to agree on the final terms of the Lease (hereinafter defined) within thirty (30) days after receipt of the preliminary cost estimates, this Agreement will automatically terminate, whereupon the costs of the Architect through the date of termination shall be shared equally (50/50) by Owners and City. If City elects to proceed with the design and construction of the Parking Garage upon receipt of the preliminary cost estimates and Owners and City are able to agree upon the final terms of the Lease, then Owners shall cause Architect to prepare design development documents for the Parking Garage. The design development documents shall be subject to the reasonable approval of Owners and City. Upon approval of the design development documents, Owners will cause the Architect to prepare a biddable set of drawings and specifications setting forth in detail the requirements for construction of the Parking Garage (the "Final Plans") and Owners shall obtain bids for the construction of the Parking Garage from contractors selected by Owner. Owner shall award the construction contract.

- (c) Construction of Parking Garage. Owners, at its expense, shall cause the Parking Garage to be constructed substantially in accordance with the Final Plans. Owners shall provide copies of the construction contract to City, along with copies of all change orders or other amendments or modifications to the construction contract. City shall have the right to inspect the construction of the Parking Garage during the course of construction and notify Owners of any material deviations from the Final Plans, and Owners shall cause any such material deviations to be promptly corrected. Owners shall cause the construction of the Parking Garage to be completed no later than nine (9) months after approval of the design development documents, subject to events of force majeure. Provided that Owners are in compliance with all applicable local laws in connection with the construction of the Parking Garage, City will issue a building permit allowing construction of the Parking Garage based on the Final Plans and a certificate of occupancy upon completion of the construction of the Parking Garage. City acknowledges and agrees that no other City issued permit or license is required in order for City or Owners to operate the Parking Garage.
- (d) Parking Garage Lease. Contemporaneously upon Owners' award of the construction contract for the construction of the Parking Garage, Owners, as

landlord, and City, as tenant, will execute the lease attached hereto as Exhibit “C” (the “Lease”). For purposes of determining the monthly Base Rent and the purchase price for the Tenant’s Option to Purchase in the Lease, the following terms shall have the following meanings. “Project Costs” shall include all construction and financing costs associated with the design and construction of the Parking Garage, including, without limitation: (i) fees and expenses for all design, engineering and similar professional services, less any costs paid by City under Paragraph 1(b) above; (ii) the cost of city permits, licenses, development impact fees and other governmental approvals; (iii) the cost of all labor, materials, equipment rental, and tools to construct the Parking Garage; (iv) the cost of all site improvements including access drives, landscaping, street improvements, pad preparation and soils testing and treatment, utility relocations and connections, fences and barricades, temporary power, security and traffic control, insurance (including builder’s risk) and bonding (including a payment and performance bond from the general contractor), and other similar incidental items; (v) the cost of all construction interest and financing fees, appraisals/reports and lender’s policy of title insurance; and (vi) a construction administration fee to be determined by Owners and City. “Owners’ Estimated Permanent Financing Costs” shall be determined upon completion of the Parking Garage and shall include the actual fees paid by Owners to convert the construction financing into permanent financing (including appraisals/reports and lender’s policy of title insurance) based on no more than a 5-year term, with an amortization period of not more than 20 years, and a projected fixed interest rate of not more than five percent (5%) per annum, plus the interest projected to be paid thereon by Owners pursuant to such fixed rate over such 5-year term.

2. **Events of Default by Owner and City Remedies.** Each of the following shall constitute an Event of Default by Owners under this Agreement:

- (a) Construction of Parking Garage. Owners’ failure to timely complete the construction of the Parking Garage in accordance with the deadline set forth in Paragraph 1(c), except to the extent such failure is caused by any act or failure to act on the part of City. Owners’ failure to comply with applicable codes and laws affecting construction shall not constitute City’s cause under the preceding sentence.
- (b) Insolvency. The dissolution or termination of either Owner’s existence as a going business, either Owner’s insolvency, appointment of receiver for any part of the Owner’s property, any assignment of all or substantially all of the assets of either Owner for the benefit of creditors of the Owner, any type of creditor workout for the Owner, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Owner unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing, any of which occur prior to the completion of the Parking Garage.
- (c) Taxes. Either Owner allows its property taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest

and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from the City.

- (d) Other Defaults. Failure of Owners to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, and Owners fail to cure such failure within thirty (30) days after written notice from the City describing such failure.
- (e) Remedies. If any Event of Default by Owners shall occur, the City may by written notice to Owners elect to terminate its obligations hereunder, enforce specific performance, or seek such other remedies as may be allowed under the Lease or by law, at the option of the City, except for an Event of Default described in the “Insolvency” subparagraph above, in which case such termination of obligations shall be automatic and not optional, in addition to seeking such other remedies as may be allowed by law.

3. Events of Default by City and Owner Remedies. Each of the following shall constitute an Event of Default by City under this Agreement:

- (a) Defaults. Failure of City to comply with or to perform any obligation, covenant or condition contained in this Agreement, and City fails to cure such failure within thirty (30) days after written notice from Owners describing such failure.
- (b) Remedies of Owners. If any Event of Default by City shall occur, Owners may by written notice to City elect to terminate this Agreement, in addition to seeking such other remedies as may be allowed under the Lease or by law. In the event Owners terminate this Agreement on account of an Event of Default by City after City has elected to proceed with the design and construction of the Parking Garage and prior to the award of the construction contract for the Parking Garage, City shall reimburse Owners for all costs of the Architect and other related professional design expenses paid by Owners.

4. Miscellaneous. The following miscellaneous provisions are a part of this Agreement:

- (a) This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No modification, alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the modification, alteration or amendment.
- (b) In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation as a prerequisite to filing suit. Nothing herein shall impair either party’s rights or remedies hereunder in the event of a default.

- (c) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in Collin County, Texas.
- (d) This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Each Owner warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Owner to the same.
- (e) The City Council shall authorize the City Manager to execute this Agreement on behalf of City.
- (f) In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Agreement shall, to the extent reasonably possible, remain in force as if such invalid provision were not a part hereof.
- (g) All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- (h) "Force majeure" when used in this Agreement shall mean any contingency or cause beyond the reasonable control of the Owners, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Owners), fires, explosions, floods, strikes, and actions of the elements, including without limitation inappropriate temperature conditions, rainfall or other interfering precipitation or weather conditions (but only to the extent that Owners' contractor for the Parking Garage is granted extensions to the construction thereof). Force majeure shall not include delays caused by the City's failure to approve construction work under municipal codes or ordinances and which construction work is in the discretion of the City to approve or disapprove.
- (i) This Agreement shall not be recorded. Upon the execution of this Agreement a memorandum of this Agreement shall be filed in the official public records of Collin County, Texas. The provisions of this Agreement shall be deemed to run with the Property and all improvements thereon and shall be binding upon and inure to the benefit of the successors of Owners. This Agreement shall not be assigned without City's written consent. Upon completion of all of Owners' obligations

under this Agreement, City will release the Property from this Agreement and will deliver at Owners' request such terminations or releases in recordable form as Owners' may reasonably request.

- (j) Time is of the essence in the performance of this Agreement.

(balance of page is intentionally blank)

EXECUTED to be effective as the date first set forth above.

OWNERS:

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

CITY:

CITY OF MCKINNEY, TEXAS

By: _____
Paul Grimes
City Manager

ATTEST:

City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

EXHIBIT "A"

Legal Description of Property

EXHIBIT "B"

Site Plan for Parking Garage

EXHIBIT "C"

Lease