

**PUBLIC-PRIVATE AGREEMENT FOR THE CONSTRUCTION, FINANCING,
OPERATION, MAINTENANCE, MANAGEMENT AND ACQUISITION OF
POLICE GARAGE**

This Public-Private Agreement For The Construction, Financing, Operation, Maintenance, Management and Acquisition of the Police Garage (the “Garage Agreement”) is entered into as of the ___ day of February, 2017 (the “Effective Date”), by and between Hagerman Police Station, LLC, an Indiana limited liability company (“Hagerman”), and the City of Fishers, Indiana, by and through its Board of Public Works & Safety (the “City”), on the following terms and conditions:

RECITALS

WHEREAS, on or about September 23, 2016, the City issued a Request for Proposals And Qualifications To Design, Build, Finance, And Operate The City Of Fishers Police Station And Garage Through A Public-Private Partnership Agreement (“RFPQ”);

WHEREAS, pursuant to the RFPQ, the City sought Offerors to, among other responsibilities, develop, design, build, finance, maintain, manage and operate a public parking garage on property owned by the City;

WHEREAS, Hagerman submitted a proposal and statement of qualifications to the City, and at its November 28, 2016 duly noticed, public meeting, the City unanimously (a) determined that Hagerman was reasonably susceptible of being selected for a public-private agreement in accordance with Ind. Code §5-23 *et seq.* and (b) voted to enter into a Scoping Agreement with Hagerman;

WHEREAS, on or about November 28, 2016, Hagerman and the City entered into the Scoping Agreement;

WHEREAS, with respect to the Garage, Hagerman has provided the PD/Garage Pre-Construction Services and otherwise fully satisfied all responsibilities under the Scoping Agreement;

WHEREAS, the City has negotiated the best and final offer for the Garage with Hagerman;

WHEREAS, pursuant to Ind. Code §§ 5-23-5-9 and 5-3-1 *et. seq.*, the City provided public notice and held a hearing at which the City recommended Hagerman for a public-private agreement for the Garage;

WHEREAS, Hagerman and the City now desire to enter into this Garage Agreement for Hagerman to build, finance, maintain, manage and operate the Garage consistent with the Final Documents and Drawings and the Laws; and

WHEREAS, all terms not specifically defined herein shall have the meanings ascribed to them respectively in the RFPQ or Scoping Agreement, as applicable.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the City and Hagerman agree as follows:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this Garage Agreement and are hereby incorporated into and made a part of this Garage Agreement as though they were fully set forth in this Article I.

ARTICLE II. DEFINITIONS

Act shall mean Ind. Code § 5-23 *et. seq.*

Ancillary Agreements shall mean all instruments and agreements referenced or contemplated herein, including, without limitation, the Multi-Party Agreement, the Purchase Agreement, and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Garage Agreement.

Catch-Up Plan shall mean a plan pursuant to which Hagerman will: (a) avoid falling further behind the dates set forth in the Construction Schedule for construction of the Garage and (b) complete the Garage in accordance with (and in no event more than thirty (30) days after) the applicable dates set forth in the Construction Schedule.

Certified Cost Statement shall mean an affidavit executed by Hagerman affirming the Garage Costs actually incurred to complete the Garage and perform or cause to be performed all items included in Garage Budget, including without limitation, the amount included in the Garage Loan Statement, which amount may not exceed the Maximum Price.

Change Order shall mean a change order executed by the City (or its designee) and Hagerman finalizing the inclusion into the Final Documents and Drawings of a change proposed in a Change Order Request by Hagerman that is approved by the City (or its designee); provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Hagerman.

Change Order Request shall mean a written request for a change to the Final Documents and Drawings.

City Body or City Bodies shall mean any of the City or its related bodies and commissions, as applicable.

City Fees shall mean impact fees, park impact fees, inspection fees, variance or re-zoning fees, stormwater permit fees, improvement location fees, building permit fees, sign permit fees, and all applicable local fees if assessed by the City and directly related to the Garage.

Claims shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.

Closing shall have that meaning ascribed to it in the Purchase Agreement.

Closing Date shall have the meaning ascribed to it in the Purchase Agreement.

Commence Construction, irrespective of tense, shall mean material and substantial work on the Project Site related to the construction of the Garage such as installation of footings, foundations, and infrastructure and shall not be deemed to occur as a result of mere excavation work.

Construction Contract shall mean a construction contract with the General Contractor for the construction of the Garage. The Construction Contract shall be (a) subject to the reasonable approval of City; and (b) terminable by the City, without recourse or liability to any City Bodies, on ten (10) days' notice in the event the City exercises its remedies under **Sections 7.04(A), (B), (C) or (D)(ii)(2) or (3)**.

Construction Drawings shall mean construction drawings for the Garage attached as **Exhibit A**.

Construction Meetings shall mean weekly status meetings on the dates and times to be mutually determined by Hagerman and the City at which the parties discuss the construction progress for the Garage.

Construction Schedule shall mean the Garage construction schedule attached as **Exhibit B** that provides for Substantial Completion of the Garage by or before August 1, 2018.

Cure Period shall mean a period of: (a) ten (10) days after written notice of an Event of Default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Garage Agreement to be performed or observed by it receives written notice specifying the nature of the Event of Default; provided that, if such Event of Default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the Event of Default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than sixty (60) days after the date of the default. Notwithstanding the foregoing, a Cure Period shall not be applicable to a default under **Section 7.04(A), (B) or (C)** any specific cure periods for such defaults being expressly set forth in **Section 7.04(A), (B) or (C)** and a Cure Period shall not be applicable to a default under an Ancillary Agreement, any specific cure periods for such defaults being expressly set forth in such Ancillary Agreement.

Declaration shall mean the "Declaration of Covenants and Easements" described in **Article IX**. The Declaration shall, among other things, (a) provide for the construction, occupation, maintenance and operation of the Garage by Hagerman on the Garage Parcel until such time as the Garage is conveyed to the City; (b) standards and responsibility for the maintenance and repair of the Garage prior to Closing; (c) address the following with respect to the Garage: (i) the City's unbridged use; (ii) routine and capital maintenance and repair; (iii) required signage; (iv) insurance and utilities; (v) terms, conditions, hours, and procedures for the shared public and private use of the Garage; (vi) charges for the Parking Spaces and the means and methodology for collection and allocation of parking revenues; and (vii) such other terms as may be agreed upon by the parties.

Design Development Documents shall mean detailed design development documents for the Garage attached as **Exhibit C**.

Divestiture Payment shall mean in the case of the exercise of the Power of Termination as a result of (a) a default by Hagerman under **Section 7.04(A)**, One Dollar (\$1.00); and (b) a default by Hagerman under **Section 7.04(B)**, the sum of (i) the amount of the proceeds of the Garage Loan

disbursed pursuant to the terms and conditions of the Garage Loan Documents for the Garage; (ii) unpaid, accrued interest on the Garage Loan at the regular (non-default) rate of interest; and (iii) the costs actually and commercially reasonably incurred by Hagerman for the work or product of third parties since the immediately prior disbursement of proceeds from the Garage Loan that would otherwise qualify for payment pursuant to the Funding Provisions had the City not exercised the Power of Termination; which amount shall be paid by the Lender pursuant to a final draw request thereby increasing the amount of the Garage Loan disbursed. The foregoing subsection b(iii) shall not be interpreted to include profit or other costs incurred by Hagerman for payment to its owners, principals, employees or members.

Effective Date shall mean the date set forth in the opening paragraph of this Garage Agreement.

Event of Default shall have the meaning set forth in **Section 7.01**.

Final Documents and Drawings shall mean, collectively, the Design Development Documents, Construction Drawings, Construction Schedule and Garage Budget.

Final Inspection shall mean an inspection of the Garage after Substantial Completion thereof.

Force Majeure shall mean, with respect to Hagerman or City Bodies any cause that is not within the reasonable control of Hagerman or City Bodies, respectively (including, without limitation: (a) unusually inclement weather but not prolonged inclement cold, ice, sleet, snow or hail; (b) the unusual unavailability of materials, equipment, services, or labor; and (c) utility or energy shortages or acts or omissions of public utility providers); provided that a party's failure to anticipate normal and customary delays due to weather or normal and customary delays in obtaining Required Permits shall not be deemed Force Majeure.

Funding Provisions shall mean those provisions in the Multi-Party Agreement governing disbursements of the proceeds of the Garage Loan to Hagerman and requiring such disbursement in a commercially reasonable manner.

Garage shall mean, consistent with the Final Documents and Drawings, the: (a) the parking facility containing approximately 240 total parking spaces, to be constructed by Hagerman; (b) garage entrances and exits, ramps, elevators, stairwells, elevator lobbies, and all related facilities; (c) all facades, exterior walls, roofs, foundations and other structural and aesthetic components thereof; (d) all other improvements, fixtures and other items of property that are installed or located on the Garage Parcel, together with all additions, alterations and replacements thereof; and (e) the Public Infrastructure.

Garage Budget shall mean the budget attached at **Exhibit D** which budget includes, among other items, the line-item cost incurred by Hagerman to complete the Garage portion of the PD/Garage Pre-Construction Services.

Garage Costs shall mean the actual cost to design, develop, finance, construct, complete, operate and maintain the Garage, perform or cause to be performed all items included in the Garage Budget, and fund other soft costs, fees, and expenses incurred by Hagerman in connection with the foregoing or otherwise completing its other obligations under this Purchase Agreement and the BOT Agreement, including without limitation the amount included in the Garage Loan Statement and capitalized interest borrowed.

Garage Improvements shall mean any portion(s) of the constructed Garage prior to Substantial Completion.

Garage Lender shall mean the financial institution that is not affiliated with Hagerman making the Garage Loan, and any successor or assignee thereof.

Garage Loan shall mean a construction loan to Hagerman in an amount not to exceed Five Million Nine Hundred Sixty Thousand Dollars (\$5,960,000) meeting the requirements set forth in the Garage Purchase Agreement and to be used to fund Garage Costs.

Garage Loan Documents shall mean the documents evidencing or securing the Garage Loan.

Garage Loan Statement shall mean a statement by the Garage Lender certifying the amount owed by Hagerman on the Garage Loan on the Closing Date.

Garage Parcel shall mean site described and depicted on **Exhibit E** on which the Garage is to be constructed.

Garage Purchase Price shall mean an amount equal to the amount affirmed in the **Certified Cost Statement**.

General Contractor shall mean Hagerman, Inc.

Inspector shall mean such party or parties designated by the City as its inspector.

Latent Defect shall mean a Material Defect that: (a) is not discovered, and reasonably is not discoverable, by the City or Inspector during a Permitted Inspection and/or the Final Inspection; (b) has a material and adverse effect on the use, operation, structure, or longevity of the Garage; and (c) is discovered within ten (10) years of Substantial Completion.

Latent Defect Period shall mean, pursuant to Ind. Code §32-30-1-5, a period of time commencing at Substantial Completion and ending on the date that is ten (10) years thereafter.

Laws shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City's Unified Development Ordinance, Nickel Plate Code and the Americans with Disabilities Act and the Act.

Material Defect shall mean any item or component of the Garage that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Documents and Drawings; or (c) has not been performed materially in accordance with the terms and conditions of this Garage Agreement.

Maximum Price shall mean an amount equal to the total amount included in the Garage Budget subject to **Section 5.02**.

Multi-Party Agreement shall mean an agreement by and among the City, Hagerman, and the Garage Lender pursuant to which (a) the Garage Lender agrees to give to the City: (i) notices of defaults by Hagerman under the Garage Loan Documents; (ii) the right (but not obligation) to cure defaults by Hagerman under the Garage Loan Documents; (iii) the right to purchase the Loan in the event of a default by Hagerman under this Garage Agreement or the Garage Loan Documents if such default is not cured within the Cure Period or other applicable cure period for an amount equal to: (A) the proceeds of the Garage Loan disbursed pursuant to the terms and conditions of the Garage Loan Documents; and (B) unpaid, accrued interest on the Garage Loan at the regular (non-default) rate of interest; (b) provides for the release of the Garage Loan in the event of the exercise of the Power of Termination and upon payment of the Divestiture Payment under **Section 7.04(A)** or **7.04(B)**; and (c) provides the City the right to keep the Garage Loan in place if the City

exercises its right under **Section 7.04(C)** to complete the Garage for and on behalf of Hagerman, including the right to obtain draws up to the maximum principal amount of the Garage Loan pursuant to draw requests delivered by the City to the Garage Lender (with copies to Hagerman). The Multi-Party Agreement shall be in form and substance reasonably acceptable to the City, Hagerman, and Garage Lender.

Non-Compliance Notice shall mean a written notice from the City to Hagerman that identifies Material Defects with respect to the Garage discovered by the City or the Inspector during a Permitted Inspection and/or the Final Inspection.

Parking Spaces shall mean the spaces intended for vehicular parking in the Garage.

Permitted Change shall mean any change to a portion of the Construction Drawings, so long as such change: (a) does not affect the exterior appearance of the Garage, the location of any entrance to the Garage, or the location, size, or number of Parking Spaces; (b) is not inconsistent with the Schematic Design Drawings approved by the City; (c) is not inconsistent with the Design Development Documents approved by the City; (d) is in conformity with each of the Site Plan, the Required Permits, and the Laws; (e) does not result in the Final Documents and Drawings containing structurally flawed elements; (f) does not make it unlikely, impracticable, or impossible for Hagerman to complete the Garage, or any component thereof, by the applicable date set forth in the approved Construction Schedule; and (g) does not result in an increase in the Garage Budget.

Permitted Inspection shall mean, as applicable, an inspection by the Inspector of any item or component of the Garage when deemed to be necessary or appropriate by any of the City Bodies and/or the Inspector, in either of their sole discretion.

Pre-Existing Environmental Conditions shall have that meaning ascribed to such term in **Section 7.08**.

Power of Termination shall mean the City's unilateral right to terminate this Garage Agreement as set forth in **Sections 7.04(A)** and **(B)**.

Project shall mean the Garage, the Police Station, the PD Remodel, and related improvements to be constructed on the Project Site, all in accordance with the Final Documents and Drawings for each of the Garage, Police Station and/or PD Remodel.

Project Budget shall mean a detailed budget for the construction of the Project in accordance with the Final Documents and Drawings that shows line-item estimated costs for each of the Garage, Police Station and/or PD Remodel.

Project Site shall have the meaning ascribed to it in the RFPQ and is generally depicted on **Exhibit E**. The Project Site specifically includes the Garage Parcel.

Public Infrastructure shall mean the streetscape and other infrastructure improvements required by and consistent with the Laws that shall be constructed by Hagerman and generally are located in the areas between the curb and the Garage on the Garage Parcel.

Purchase Agreement shall mean that Real Estate Purchase Agreement by and between the City and Hagerman dated as of even date herewith and in the form attached hereto as **Exhibit G**.

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for construction and use of the Garage.

Schematic Design Documents shall mean the document attached as **Exhibit H**.

Scoping Agreement means the November 28, 2016 agreement by and between the City and Hagerman for, among other obligations and benefits, the PD/Garage Pre-Construction Services.

Site Plan shall mean the site plan attached hereto as **Exhibit I**.

Substantial Completion shall mean the later of the date that: (i) Hagerman receives the final certificate of occupancy for the Garage; and (ii) Hagerman's architect certifies, per AIA Form G704, that the construction of the Garage is substantially complete in compliance with all Laws, this Garage Agreement, and the Required Permits subject only to minor punchlist items that do not interfere with the use or operation thereof.

Survey shall mean the survey obtained by Hagerman pursuant to the Scoping Agreement and attached as **Exhibit J**.

Title Insurer shall mean Hamilton National Title, Near North Title Group, Attn: Jerry Torr, Vice-President, 865 W. Carmel Drive, Suite 110, Carmel, Indiana 46032

ARTICLE III. OBLIGATIONS OF THE PARTIES/TERM

3.01 The City's Obligations. The City shall: (a) schedule and participate in Construction Meetings; (b) pay the Garage Purchase Price to Hagerman at Closing; (c) accept fee simple title to the Garage on the Closing Date; (d) execute and perform the Ancillary Agreements; (e) upon properly submitted applications by Hagerman, review and issue the City's development and permit applications necessary to develop the Garage Parcel and construct the Garage, including, whenever possible, coordinating with Hagerman to lower costs by issuing interim, partial, and/or conditional approvals to allow project critical activities to occur while reserving final approval of less critical activities (*e.g.*, review and approval of the improvement location permit and foundation release permits to allow overall site work and foundation installation for the Garage to be expedited and reserving for later review of streetscape improvements and other improvements to be constructed later in the construction phasing) to the extent allowed by the Laws; (f) perform its other obligations set forth herein.

3.02. Hagerman's Obligations. Hagerman shall: (a) schedule and participate in Construction Meetings; (b) construct and complete the Garage consistent with the Final Documents and Drawings and this Garage Agreement; (c) cause Garage Lender to provide the Garage Loan Statement; (d) maintain and operate the Garage pursuant to Article IX of this Garage Agreement, (e) convey the Garage pursuant to the Purchase Agreement on the Closing Date; (f) execute and perform the Ancillary Agreements; (g) reach Substantial Completion of the Garage by or before such date as mutually agreed by the parties but not later than August 1, 2018; (h) deliver to the City, not less than ten (10) days prior to the Closing, the Certified Cost Statement; (i) within three (3) business days of request by the City, provide Hagerman's books and records to verify costs incurred to the date of such request; (j) perform its other obligations set forth herein.

3.03 Term. This Garage Agreement shall take effect on the Effective Date, and shall remain in effect until the earliest of (a) Closing, or (b) the termination of this Garage Agreement as provided therein (the "Term"). Notwithstanding the foregoing or anything contained herein to the contrary, any provisions that by its terms specifically survives termination shall continue in full force and effect as specified.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES

Section 4.01. By Hagerman

A. Survey Conditions. Hagerman has determined that the Survey: (i) describes the perimeter of the Project Site as a single parcel without gaps, gores, or overlaps; (ii) shows no encroachments thereto; (iii) shows no title defects thereto; (iv) establishes that no part of the Project Site is located within: (A) a “flood hazard zone”, as shown on the applicable Federal Insurance Rate Map; or (B) a “floodway” or “flood plain”, as shown on the applicable Flood Control District Map; and (v) is otherwise acceptable for construction of the Garage and Hagerman’s completion of its obligations pursuant to this Garage Agreement.

B. Environmental Condition. Hagerman has determined that no test, inspection, examination, study or investigation of the Project Site establishes that there: (i) is contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws; (ii) are underground storage tanks located on the Project Site; and (iii) are wetlands on the Project Site.

C. Physical Condition. Hagerman has determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Garage, in accordance with the terms and conditions of this Garage Agreement.

D. Zoning. Hagerman has determined that the zoning of the Garage Parcel is proper and appropriate for the construction of the Garage and use of the Garage in accordance with the terms and conditions of this Garage Agreement.

E. Utility Availability. Hagerman has determined that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are: (i) in adjoining public rights-of-way or properly granted utility easements; and (ii) serving, or will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Garage in accordance with the terms and conditions of this Garage Agreement.

F. Required Permits. Hagerman has determined that that it (A) obtained; or (B) shall be able to obtain all Required Permits.

G. Financial Ability. Hagerman has determined that it has adequate funds (cash on hand and/or Garage Lender has provided Garage Loan preapproval, and Hagerman is reasonably certain it will close on the Garage Loan) to construct the Garage and complete the terms of this Garage Agreement. This Agreement and all ancillary agreements and documents, including without limitation, the Purchase Agreement, shall automatically terminate if Hagerman has not closed on the Garage Loan within thirty (30) days of the Effective Date.

H. Ancillary Documents. Hagerman has approved or shall approve prior to Closing the form and substance of all Ancillary Agreements.

I. Authority. Hagerman represents and warrants to each City Body that: (i) Hagerman is an Indiana limited liability company duly existing and validly formed under the laws of the State of Indiana; (ii) Hagerman shall not enter into any contracts or undertakings that would limit, conflict

with, or constitute a breach of this Garage Agreement; (iii) Hagerman has the authority: (A) to enter into this Garage Agreement; and (B) to perform its obligations hereunder, (iv) Hagerman has been duly authorized by proper action: (A) to execute and deliver this Garage Agreement; and (B) to perform its obligations hereunder; and (v) this Garage Agreement is the legal, valid, and binding obligation of Hagerman; (vi) neither Hagerman nor any party affiliated with Hagerman has engaged or dealt with any real estate broker or agent in connection with the Garage or this transaction and no such person or entity is entitled to claim a commission or fee in connection with this Garage Agreement by, through, or as a result of, the acts or omissions of Hagerman or any party affiliated with Hagerman.

J. Non-Discrimination. Hagerman, for itself, agrees that during the construction of the Garage, Hagerman will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Hagerman agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Hagerman will state, in all solicitations or advertisements for employees placed by or on behalf of Hagerman, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

K. E-Verify. All terms defined in IND. CODE § 22-5-1.7 *et seq.* are adopted and incorporated into this Section. Pursuant to IND. CODE § 22-5-1.7 *et seq.*, Hagerman covenants to enroll in and verify the work eligibility status of all of its employees using the E-Verify program, if it has not already done so as of the Effective Date. Within ten (10) days after the Effective Date, Hagerman shall execute an affidavit affirming that: (a) it is enrolled and is participating in the E-Verify program; and (b) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Hagerman shall provide the City with documentation that it has enrolled and is participating in the E-Verify program. This Garage Agreement shall not take effect until said affidavit is signed by Hagerman and delivered to the City's authorized representative.

Section 4.02. By the City.

A. Ancillary Documents. The City has approved or shall approve prior to Closing the form and substance of all Ancillary Agreements.

B. Final Documents and Drawings. The City has approved the Final Documents and Drawings.

C. Statutory Procedure. The City has completed or shall complete all procedures required by Laws to undertake the obligations contemplated hereunder; and all requisite public bodies shall have approved this Garage Agreement and authorized the performance of the City's obligations hereunder.

D. No Violation. This Garage Agreement and compliance with the terms hereof are not in violation of any applicable Laws and no claims or causes of action asserting any violation of Laws shall have been asserted or threatened by any third party.

E. Purchase Proceeds. As of the Closing Date, the City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary and prudent to procure and expend the funds necessary to satisfy the Garage Purchase Price and accept transfer of the Garage; and (ii) demonstrated that such funds shall be sufficient to satisfy the Garage Purchase Price.

F. Authority. The City represents and warrants to Hagerman that: (i) it shall not enter into any contracts or undertakings or take any action or fail to take action that would limit, conflict with, or constitute a breach of this Garage Agreement; (ii) the City is a municipal corporation organized and existing under the laws of the State of Indiana; (iii) subject to the necessary proceedings required by law relating to funding the purchase of the Garage, it has the power: (A) to enter into this Garage Agreement; and (B) to perform its obligations hereunder; (iv) it has been duly authorized by proper action: (A) to execute and deliver this Garage Agreement; and (B) to perform its obligations hereunder; (v) this Garage Agreement is the legal, valid, and binding obligation of it; and (vi) it has not engaged or dealt with any real estate broker or agent in connection with the Garage or this transaction and no such person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of the City.

ARTICLE V. CONSTRUCTION & INSPECTION

Section 5.01. Compliance with Final Documents and Drawings and Laws. At all times, Hagerman shall construct the Garage consistent with the Final Documents and Drawings (subject to **Section 5.02**) and the Laws, and any failure to so construct shall be deemed a violation of and a default under this Garage Agreement.

Section 5.02. Change Orders. If Hagerman or the City desires to make any changes to the Final Documents and Drawings, schedule or price, then Hagerman, on its behalf or at the direction of the City, shall submit a Change Order Request acceptable to it to the City for review and approval. Within ten (10) days after the City receives the Change Order Request, the City shall deliver to Hagerman written notice that it approves or rejects the Change Order Request; provided that: (i) the City shall not withhold its approval unreasonably; and (ii) if the City rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that the City is rejecting; and (B) include the specific basis for such rejection. If the City approves a Change Order Request, then the City and Hagerman shall execute a Change Order. Notwithstanding anything to the contrary set forth herein: (i) Hagerman shall not be required to obtain the approval of the City with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Hagerman; provided that, with respect to a Permitted Change, Hagerman shall submit a copy of the Change Order to the City for its review prior to the execution and implementation thereof. Changes to the Final Documents and Drawings that are not identified in a Change Order approved by the City, other than Permitted Changes in a Change Order submitted to the City for review in accordance with the foregoing, shall not be deemed a Permitted Change and shall constitute an Event of Default hereunder.

Section 5.03. Permits. Hagerman acknowledges that any reviews or approvals obtained in connection with the PD/Garage Pre-Construction Services completed pursuant to the Scoping Agreement are in addition to, and not in lieu of, any plan review or Required Permits required

under applicable Laws for the construction of the Garage hereunder, and such reviews and approvals shall not be deemed a warranty or representation of any kind by any City Bodies that the Final Documents and Drawings comply with, or are approved under, applicable Laws. Prior to commencing construction of the Garage, Hagerman shall obtain Required Permits with respect to the Garage that are available prior to commencement and shall obtain the remainder of the Required Permits upon availability. The City shall use reasonable efforts to assist Hagerman in its efforts to obtain the Required Permits. Hagerman acknowledges that City Bodies cannot (and do not) guarantee that Hagerman will be able to obtain the Required Permits.

Section 5.04. Construction. Hagerman shall construct the Garage: (i) in a good and workmanlike manner; (ii) in accordance with the Final Documents and Drawings (as modified by any Change Orders); and (iii) in compliance with the Laws.

Section 5.05. Fee Waiver. The City shall waive or pay all City Fees related to construction of the Garage.

Section 5.06. Permitted Inspection. At any time during construction of the Garage, the City may perform a Permitted Inspection. Within seven (7) business days after a Permitted Inspection, the City may deliver to Hagerman a Non-Compliance Notice. If the City timely delivers a Non-Compliance Notice, then Hagerman shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or deemed to have been accepted, by the City. Notwithstanding anything to the contrary set forth herein, all items or components of the Garage with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by the City, subject to Latent Defects.

Section 5.07. Final Inspection. If Hagerman delivers to the City a written request for a Final Inspection, then, on or before the later of the date that is ten (10) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; the City shall: (1) conduct the Final Inspection; and (2) deliver a Non-Compliance Notice (if applicable) to Hagerman. Upon receipt of a Non-Compliance Notice, Hagerman shall correct or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice. All then-completed items or components of the Garage with respect to which no Material Defects or punchlist items are identified in a timely Non-Compliance Notice shall be deemed to be accepted by the City, subject to any later discovery of Latent Defects. All Material Defects and punchlist items shall be promptly completed; and, upon correction of all Material Defects and completion of punchlist items identified in the Non-Compliance Notice, the applicable work shall be deemed completed (subject to **Section 5.09**). Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to this **Section 5.07**; the City shall have no further inspection rights except to ensure compliance by Hagerman with the Required Permits and as permitted by the Laws.

Section 5.08. Failure to Cure. If Hagerman fails to cure any item in a Non-Compliance Notice or any Latent Defect identified in writing by City, in each case, within thirty (30) days of the receipt of such notice, then City, in addition to any other right or remedy provided herein (and regardless of any Cure Period provided herein), shall be entitled to (a) a credit to the Purchase

Price (reflected in the Title Insurer's Settlement Statement), if prior to Closing; or (b) payment, if occurring post-Closing in the amount of Five Hundred and no/100 Dollars (\$500.00) per day from Hagerman for each day after the expiration of such 30-day period that any items in any (i) Non-Compliance Notice remain incomplete; or (ii) other notice of any Latent Defect remain incomplete; provided that, if such Material Defect or Latent Defect is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for Hagerman to remedy such Material Defect or Latent Defect (not to exceed sixty (60) days) so long as Hagerman commences to remedy such Material Defect or Latent Defect within the thirty (30) day period and thereafter continuously and diligently pursues such remedy to completion. Notwithstanding the foregoing, the parties expressly acknowledge and agree that Hagerman may petition the City for an alternative resolution (other than that provided in this Section 5.08) for items subject to Cure or for Latent Defects, and the City, exercising commercially reasonable judgment and in its sole discretion, shall determine whether such an alternative resolution is acceptable.

Section 5.09. Cure of Defects. Upon receipt of a Non-Compliance Notice, the City and Hagerman shall agree when and how Hagerman shall remedy the Material Defect or Latent Defect that is the subject of the Non-Compliance Notice in such manner and at such times as to minimize disruption (to the extent commercially reasonable) to the operation of the Garage.

Section 5.10. Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by the City pursuant to this Article shall be applicable with respect to any Latent Defects. Upon discovery of any Latent Defects by the City, the City shall promptly provide a Non-Compliance Notice thereof to Hagerman which shall trigger the cure procedure set forth in **Section 5.08**. Hagerman shall be responsible for all costs incurred in correcting or remedying Latent Defects of which it receives notice within the Latent Defect Period. Hagerman shall be released from all liability with respect to Latent Defects of which it receives notice after the expiration of the Latent Defect Period. This Section 5.10 shall survive termination of the Agreement.

Section 5.11. General; Testing. In the case of a Permitted Inspection or the Final Inspection, the parties shall: (i) comply with all Laws of which such party has been informed that have been established for personnel present on the construction site; and (ii) coordinate the inspections so that the inspections do not interfere with the performance of construction. The City and Hagerman each shall have the right to accompany, and/or have its construction manager accompany, the inspecting party during any Permitted Inspection and/or the Final Inspection. Notwithstanding anything to the contrary set forth herein, to the extent the City, in the exercise of its reasonable discretion, requires any sampling or testing (e.g., concrete testing) as part of a Permitted Inspection and/or Final Inspection: (i) the deadline for the City's issuance of a Non-Compliance Notice shall be deemed extended to five (5) business days following the City's receipt of a complete and final set of such test or sample results; and (ii) the applicable dates in the Construction Schedule shall likewise be extended.

Section 5.12. No Waiver of Police Power. The foregoing rights in favor of the City shall be in addition to, and not in lieu of, any rights and remedies the City may have under this Garage

Agreement or applicable Laws; and nothing set forth herein shall be deemed to waive any authority, right, remedy, or power vested in any of the City Bodies under applicable Laws.

Section 5.13. Information Review. Upon the City’s request, Hagerman agrees to permit the City to review and inspect copies of any and all (i) Garage Loan draw requests (as well as any revised draw requests); and (ii) any inspections and reports related to the Garage.

Section 5.14. Insurance. During the construction of the Garage, Hagerman shall maintain the policies of insurance described on **Exhibit K**. Each such policy shall: (a) be written by a company reasonably acceptable to the City; and (b) provide that it shall not be modified or canceled without written notice to the City at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by Hagerman shall name the City as an additional insured. Hagerman shall deliver to the City certificates of the insurance policies required by this **Section 5.13**, executed by the insurance company or the general agency writing such policies. Other required coverages may be specified in the Ancillary Agreements.

ARTICLE VI. PURCHASE TERMS & CLOSING

Hagerman shall convey and the City shall acquire the Garage at the Closing in accordance with the terms and conditions of the Purchase Agreement. The Closing shall occur at such time as mutually agreed by the parties, but in no event later than August 1, 2018.

ARTICLE VIII. DEFAULT

Section 7.01 Events of Default. “Event of Default” shall mean, with respect to either party, a material breach of this Garage Agreement or any of the Ancillary Agreements to be performed or observed by it, if such breach is not cured within the applicable Cure Period.

Section 7.02 General Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Garage Agreement; (ii) protect the rights granted to the non-defaulting party under this Garage Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Garage Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Garage Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Garage Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses together with interest at the rate of 8% per annum. Notwithstanding anything to the contrary set forth herein, the City shall exercise its rights under this Subsection subject to the terms of the Multi-Party Agreement.

Section 7.03 No Remedy Exclusive; Limitation. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Garage Agreement or

now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party in exercising any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Garage Agreement or by the Laws. In no event shall any party hereunder be liable to the other for punitive or consequential damages as a consequence of an Event of Default by such party or otherwise. In the event either party hereto employs an attorney in connection with Claims by one party against the other arising from the operation of this Garage Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such Claims. The term "prevailing party" as used in this Garage Agreement shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

Section 7.04 Special Defaults and Remedies.

A. No Commencement. Subject to Force Majeure, if Hagerman has not Commenced Construction of the Garage within ninety (90) days after the Effective Date, then, at any time until Hagerman commences construction of the Garage, City may elect, in addition to any other legal and equitable remedies available to City, to (i) unilaterally terminate this Agreement and all Ancillary Agreements; and (ii) and exercise its Power of Termination without any liability or obligation to Hagerman or Garage Lender, except as provided in this paragraph and in the Scoping Agreement. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to Hagerman and Garage Lender of written notice delivered at any time after such one ninety (90) day period but prior to commencement of construction. Such notice shall be accompanied by the Divestiture Payment. Upon delivery of such notice and payment of the applicable Divestiture Payment to Hagerman, Hagerman shall abandon the Project Site and remove all equipment and personal property from the Project Site. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 7.04(A)**, or to invoke any available remedy with respect to an Event of Default by Hagerman shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder. No consent from, or notice to, Garage Lender or any cure right in favor of Garage Lender shall be required in connection with the exercise of such right. The foregoing terms shall be incorporated into the Multi-Party Agreement.

B. Work Stop. Subject to Force Majeure, and after construction has begun, if (i) Substantial Completion of the Garage has not occurred by August 1, 2018; or (ii) all construction work of a material nature ceases with respect to the Garage for a period of at least sixty (60) consecutive days or for more than a total of ninety (90) days during any one hundred eighty (180) day period, then, at any time until construction work of a material nature resumes and is continuing, City may elect, in addition to any other legal and equitable remedies available to City, to (i) unilaterally terminate this Agreement and all Ancillary Agreements; and (ii) re-enter the Project Site and

exercise its Power of Termination without any liability or obligation to Hagerman or Garage Lender, except as provided in this paragraph and in the Scoping Agreement. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to (A) Hagerman and Garage Lender of written notice (1) at any time after the expiration of the time period set forth in clause (i) of the preceding sentence (but prior to Substantial Completion of the Garage); or (2) prior to material resumption of the construction work in the case of clause (ii) of the preceding sentence; and (B) Garage Lender of the Divestiture Payment. Upon delivery of such notice and payment, if applicable, Hagerman shall abandon the Project Site and remove all equipment and other forms of personal property from the Project Site and surrender possession of the Garage Improvements and convey title thereto, and all estates and interests of Hagerman in the Garage Improvements to City. Any such vesting of the Garage Improvements shall be free and clear of the Garage Loan and any and all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than existing immediately prior to Hagerman's commencement of construction on the Garage, and Garage Lender shall immediately execute releases of any mortgages, assignments and any other instruments encumbering Garage whether or not such instruments are deemed released and/or extinguished by operation of law. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 7.04(B)**, or to invoke any available remedy with respect to an Event of Default by Hagerman shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder. No consent from Garage Lender or any cure right in favor of Garage Lender shall be required in connection with the exercise of such right. The foregoing terms shall be incorporated into the Multi-Party Agreement.

C. Right of Conveyance For Garage Improvements. In lieu of exercising the Power of Termination as a result of a default under **Section 7.04(A) or (B)**, the City may alternatively elect, upon ten (10) business days' written notice to Hagerman and the Garage Lender, to require Hagerman to abandon the Project Site and remove all equipment and personal property from the Project Site and relinquish any interest in and to the Garage Improvements in accordance with the terms and conditions of this **Section 7.04(C)**, in which case the City and Hagerman shall close the conveyance within fifteen (15) days after such election. At the closing of such conveyance, Hagerman shall execute and deliver closing documents for the Garage Improvements to the City which deed shall be subject only to (A) Lendor's mortgage; and (B) such other exceptions (liens) as reasonably are acceptable to the City. Hagerman shall also execute and deliver to the City any documents necessary or requested to formally terminate Hagerman's interest in the Garage Improvements. No delay or failure by the City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 7.04(C)**, or to invoke any available remedy with respect to an Event of Default by Hagerman shall under any circumstances be deemed or held to be a waiver by the City Bodies of the right to do so thereafter, or an estoppel of the City Bodies to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder. No consent from Garage Lender or any cure right in favor of Garage Lender shall be required in connection with the exercise of such right.

D. Delay. Subject to Force Majeure, if, after Construction Commences, Hagerman falls sixty (60) or more days behind the applicable dates set forth in the Construction Schedule, then:

1. The City, by delivery of written notice to Hagerman and Garage Lender, may require Hagerman to submit, within fifteen (15) days, a Catch-Up Plan for the City's approval, which approval shall not be withheld unreasonably. At such time as the City has approved a Catch-Up Plan, Hagerman shall implement, and diligently pursue the application of, such Catch-Up Plan.

2. If Hagerman: (a) fails to timely submit a Catch-Up Plan; (b) submits a Catch-Up Plan that is rejected by the City; (c) fails to implement an approved Catch-Up Plan; (d) implements an approved Catch-Up Plan, but fails to diligently pursue the application thereof; or (e) implements an approved Catch-Up Plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the Catch-Up Plan, again falls sixty (60) or more days behind the applicable dates set forth in the Construction Schedule; then the City may:

- (i) develop a reasonable Catch-Up Plan and require Developer to implement, and diligently pursue the application of, such Catch-Up Plan;
- (ii) complete the Garage for and on behalf of Developer with the proceeds of the Garage Loan; or
- (iii) purchase the Garage Loan pursuant to the terms and conditions of the Multi-Party Agreement.

provided that, if the City elects any option in clause (i), (ii) or (iii), then Hagerman shall be obligated to pay to the City (or to reimburse the City for) all costs of completing the Garage that are in excess of the Maximum Price. Notwithstanding the foregoing, if the City rejects a Catch-Up Plan, the City shall: (i) specify the part or parts that the City is rejecting; and (ii) include the specific basis for such rejection; then Hagerman shall revise and resubmit the Catch-Up Plan to the City within fourteen (14) days of such notice, and the parties shall work together in good faith to develop a reasonable Catch-Up Plan.

3. Hagerman shall be responsible for all costs and expenses to prepare and implement a Catch-Up Plan (including the reasonable costs and expenses incurred by the City pursuant to this Subsection). Hagerman's liability for such costs and expenses shall survive termination of this Garage Agreement. Nothing in this **Section 7.04(D)** shall prevent or preclude the City from exercising its rights under **Section 7.04(B)**. No delay or failure by the City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 7.04(D)**, or to invoke any available remedy with respect to an Event of Default by Hagerman shall under any circumstances be deemed or held to be a waiver by the City Bodies of the right to do so thereafter, or an estoppel of the City Bodies to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder. No consent from or notice period for the benefit of Garage Lender or any cure right in favor of Garage Lender shall be required in connection with the exercise of such right. The foregoing terms shall be incorporated into the Multi-Party Agreement.

Section 7.05. Delay in Substantial Completion of Garage. As a material inducement for and in consideration of the City's obligations herein, Hagerman has affirmed and hereby guarantees

that it can reach Substantial Completion on the Garage no later than August 1, 2018 (“Final Date”). Subject to **Section 10.02**, in the event that the Garage has not reached Substantial Completion by the Final Date then City, at Closing, shall receive a credit in the amount of Two Hundred Fifty and 00/100 Dollars (\$250.00) per day for each day after the Final Date that the Garage has not reached Substantial Completion.

Section 7.06. Injunctive Remedies. If an Event of Default occurs, the non-defaulting party shall be entitled to seek specific performance or injunctive relief and in each case the other party hereby waives any claim or defense that the non-defaulting party has an adequate remedy at law.

Section 7.07. No Limitation. Notwithstanding anything to the contrary set forth herein, the rights and remedies set forth in this **Article VII** are not exclusive and shall be cumulative and in addition to every other right or remedy given under this Garage Agreement or now or hereafter existing at law or in equity.

Section 7.08. Pre-Existing Environmental Conditions. Provided that (a) Hagerman completes all Property Inspections required by the Scoping Agreement, and (b) Hagerman fully discloses any adverse findings therein to the City, Hagerman shall not be responsible for any costs or liabilities associated with any environmental conditions present on the Project Site (including, without limitation, such conditions in or in connection with existing buildings), including, but not limited to, asbestos or PCBs, or the cost of remediation thereof (the “Pre-Existing Environmental Conditions”).

ARTICLE VIII. INDEMNIFICATION & ASSIGNMENT

Section 8.01. By Hagerman. Hagerman shall indemnify and hold harmless City Bodies from and against any and all Claims arising from or connected with: (i) breaches by Hagerman under contracts to which Hagerman is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Hagerman or any party acting by, under, through, or on behalf of Hagerman; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Hagerman or any party acting by, under, through, or on behalf of Hagerman; (iii) the negligence or willful misconduct of Hagerman or any party acting by, under, through, or on behalf of Hagerman; or (iv) Hagerman suffering or causing the filing of any mechanic’s or materialmen’s lien against the Project Site, Garage or any adjacent property owned by City Bodies not caused by a failure of the City to timely pay the Garage Purchase Price; or (v) the breach by Hagerman of any term or condition of this Agreement or any Ancillary Agreement. Notwithstanding the foregoing, each City Body and any party acting by, under, through, or on behalf of such City Body shall be financially responsible for its own gross negligence or willful misconduct and in no event shall Hagerman indemnify City Bodies for any Claim arising in connection therewith. Notwithstanding anything to the contrary set forth herein, Hagerman’s obligations under this Section shall survive the termination of this Garage Agreement.

Section 8.02. Assignment. Prior to Substantial Completion of the Garage, no party hereto shall assign this Garage Agreement without the prior written approval of the other party; provided that: (a) without the prior written approval of Hagerman, the City may assign this Garage Agreement to another agency or instrumentality of the City that legally is able to perform the respective

obligations hereunder; and (b) without the prior written approval of the City, Hagerman may: (i) assign this Garage Agreement to any entity in which Hagerman maintains a controlling interest; and (ii) execute and deliver the Garage Loan Documents, including, without limitation, a collateral assignment of this Garage Agreement and/or the Purchase Agreement. Notwithstanding any assignment permitted under this **Section 8.02**, the City or Hagerman, as the case may, shall remain liable to perform all of the terms and conditions to be performed by it under this Garage Agreement, and the approval by the other party of any assignment shall not release the City or Hagerman, as the case may be, from such performance; provided that, if the City assigns this Garage Agreement to another agency or instrumentality of the City that: (a) has full power and authority to accept an assignment of this Garage Agreement and carry out the respective obligations hereunder; and (b) expressly assumes all such obligations in writing; then the City shall be released from liability under this Garage Agreement for all obligations to be performed after the date of such assignment and assumption.

ARTICLE IX. GARAGE MAINTENANCE AND OPERATION PRIOR TO THE CLOSING

Section 9.01. Use. Upon Substantial Completion, the City shall have the right to use the Garage pursuant to the Declaration.

Section 9.02. Easements. Pursuant to the Declaration, the City Bodies and Hagerman shall make, create, or reserve easements for: (i) vehicular access, ingress, and egress; (ii) parking (including, without limitation, that the Declaration shall address the use of the Parking Spaces); (iii) use of vertical transportation facilities (such as stairs and elevators); (iv) pedestrian access; (v) venting, utility, drainage, and communications facilities; (vi) subsurface retention under the Garage; (vii) basic maintenance obligations, including the obligation of Hagerman to maintain the Garage in a structurally sound condition such that it is partially available for use as a public garage as intended pursuant to this Garage Agreement; and (viii) such necessary utility easements across the Project Site as the parties may deem to be necessary or appropriate. The Declaration shall further set forth that Hagerman declares, creates, makes, and grants the following permanent, non-transferable, exclusive easements to the City for the benefit of the City:

A. Vehicular Access. Easements in favor of the City (and for the benefit of the general public as determined in the City's sole discretion) for vehicular access, ingress, and egress on, over, across, and through the Garage and Garage entrances and exits, as more specifically set forth in the Declaration.

B. Public Parking. Easements in favor of the City (and for the benefit of the general public as determined in the City's sole discretion) to park vehicles in the Parking Spaces, as more specifically set forth in the Declaration.

C. Pedestrian Access. Easements in favor of the City (and for the benefit of the general public as determined in the City's sole discretion) for pedestrian access, ingress, and egress on, over, across, and through the Garage, Garage entrances and exits, and Garage commons areas, elevators, stairwells and common facilities; from and to the public streets or other access ways adjacent to the Garage, as more specifically set forth in the Declaration.

D. Additional Provisions. The Declaration shall also include provisions requiring Hagerman to:

- (1) manage and operate the Garage (or its agent) pursuant to customary City standards;
- (2) provide routine and capital maintenance and repair (including that the applicable standard for maintenance by Hagerman (or its agent) of the Garage shall be at least as high as the standards for maintenance by the City of other public areas and amenities);
- (3) provide insurance and utilities; and
- (4) provide that: (i) all of the Parking Spaces in the Garage shall, at no cost to the City, be reserved exclusively for use by the City; and (ii) that no fees or charges shall be charged by Hagerman for parking in the Garage without the City's advance written consent. The City shall have the right to assign (provide easements) or license and record such assignment (easements) or licenses for the Parking Spaces and to charge for public parking in the Garage as set forth in the Declaration.

ARTICLE X. MISCELLANEOUS PROVISIONS

Section 10.01. Notice. Any notice required or permitted to be given by any party to this Garage Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to the City at 1 Municipal Drive, Fishers, Indiana 46038, Attn: Scott Fadness, Mayor, with copies to: Chris Greisl, City Attorney, 1 Municipal Drive, Fishers, Indiana 46038 and Jennifer Messer (via email) at jennifercmesserlaw@gmail.com; and to Hagerman Police Station, LLC at 10315 Allisonville Road, Fishers, Indiana 46038, with a copy to Melissa J. Doell, 201 North Illinois Street, Suite 1900, Indianapolis, Indiana 46204. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 10.02. Authority. Each undersigned person executing this Garage Agreement on behalf of the City and Hagerman represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the City and Hagerman, respectively, to execute and deliver this Garage Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Garage Agreement; and (c) the execution, delivery, and performance of this Garage Agreement duly have been authorized by the City and Hagerman, respectively; provided, however, City's, ability to finance the purchase of the Garage is subject to completion of certain procedures required by the Laws which City agrees to undertake to completion with diligence and in good faith.

Section 10.03. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under,

or satisfying any term or condition of, this Garage Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice thereof to the other party as soon as reasonably practical; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

Section 10.04. Merger. All prior agreements, understandings, and commitments between the parties are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

Section 10.05. Termination/Costs. In the event of the termination of this Garage Agreement on or before Closing, except as otherwise provided herein, each party shall bear their own costs in connection with negotiation and performance of this Garage Agreement.

Section 10.06. Miscellaneous. Subject to Section 8.02, this Garage Agreement shall inure to the benefit of, and be binding upon, the City and Hagerman, and their respective successors and assigns. This Garage Agreement may be signed in multiple counterparts which, when taken together, shall constitute one and the same instrument. This Garage Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Garage Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Hagerman waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Hagerman may have to: (i) assert the doctrine of “forum non conveniens”; or (ii) object to venue. This Garage Agreement may be modified only by a written agreement signed by the City and Hagerman. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Garage Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Garage Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Garage Agreement. If any provision of this Garage Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Garage Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Garage Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this Garage Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Garage Agreement or the scope or content of any of its provisions. Nothing contained in this Garage Agreement shall be construed to create a partnership or joint venture between Hagerman and the City or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Garage

Parcel is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

Section 10.07. Exhibits

- Exhibit A: Construction Drawings
- Exhibit B: Construction Schedule
- Exhibit C: Design Development Documents
- Exhibit D: Garage Budget
- Exhibit E: Garage Parcel
- Exhibit F: Project Site
- Exhibit G: Purchase Agreement
- Exhibit H: Schematic Design Documents
- Exhibit I: Site Plan
- Exhibit J: Survey
- Exhibit K: Insurance

IN WITNESS WHEREOF, the City and Hagerman have executed this Public-Private Agreement For The Construction, Financing, Operation, Maintenance, Management and Acquisition of Police Garage as of the day and year first written above.

“CITY”

CITY OF FISHERS, INDIANA

By: _____
Scott Fadness, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me to be the Mayor of the **City of Fishers, Indiana**, and acknowledged the execution of the foregoing Public-Private Agreement For The Construction, Financing, Operation, Maintenance, Management and Acquisition of Police Garage for and on behalf of said City.

WITNESS my hand and notarial seal this ____ day of _____, 2017.

Written Signature

Printed Signature

NOTARY PUBLIC

“HAGERMAN”

HAGERMAN POLICE STATION, LLC

By: _____
Jeffrey M. Hagerman, Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jeffrey M. Hagerman, personally known to me to be the Manager of **Hagerman Police Station, LLC**, an Indiana limited liability company, and acknowledged the execution of the foregoing Public-Private Agreement For The Construction, Financing, Operation, Maintenance, Management and Acquisition of Police Garage for and on behalf of said limited liability company.

WITNESS my hand and notarial seal this ____ day of _____, 2017.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

LR02582.0642418 4852-3036-8061v9