

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEED OF EASEMENT AND
MAINTENANCE AGREEMENT BETWEEN THE CITY OF HAGERSTOWN AND THE
BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND FOR
USE OF A PORTION OF COUNTY PROPERTY IN CONNECTION WITH THE
CONSTRUCTION AND MAINTENANCE OF A PUBLIC PLAZA**

RECITALS

WHEREAS, the City of Hagerstown, Maryland is a Municipal Corporation existing under and by virtue of the laws of the State of Maryland (hereinafter the "City"); and

WHEREAS, the City intends to construct and maintain a public plaza, adjacent to a portion of Hagerstown Cultural Trail, within its corporate limits ("the Plaza"); and

WHEREAS, a portion of the proposed location of the Plaza is upon property owned by the Board of County Commissioners of Washington County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland (hereinafter the "County"); and

WHEREAS, the County has generously offered to grant the City a perpetual easement over a portion of its property for the construction and maintenance of the Plaza; and

WHEREAS, the Mayor and Council have determined that it is in the best interests of the City to enter into the Deed of Easement and Maintenance Agreement.

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

1. That the Mayor and City Staff be and are hereby authorized to execute and deliver the Deed of Easement and Maintenance Agreement between the City and the County, a copy of which is attached hereto and incorporated herein by reference and to act as signatory on behalf of the City on any other

documentation necessary to effectuate the purpose of this Ordinance.

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

WITNESS AND ATTEST
AS TO CORPORATE SEAL

Donna K. Spickler
Donna K. Spickler, City Clerk

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

By: *Emily N. Keller*
Emily N. Keller, Mayor

Date of Introduction: March 23, 2021
Date of Passage: April 27, 2021
Effective Date: May 25, 2021

PREPARED BY:
SALVATORE &
MORTON, LLC
CITY ATTORNEY

DEED OF EASEMENT
AND
MAINTENANCE AGREEMENT

THIS DEED OF EASEMENT AND MAINTENANCE AGREEMENT is made this 1 day of June, 2021, by the BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland (hereinafter sometimes referred as "COUNTY" or "Grantor") and the CITY OF HAGERSTOWN, a Maryland municipal corporation (hereinafter sometimes referred to as "City" or "Grantee").

WITNESSETH: That for NO MONETARY CONSIDERATION, but for the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the said Grantor does hereby grant and convey unto Grantee, its successors and assigns, a non-exclusive, perpetual easement (the "Easement") over and across a parcel of land situate in Hagerstown, Washington County, Maryland, being shown on that certain Easement Plat prepared by the City of Hagerstown Department of Parks and Engineering dated July 15, 2019, said Easement Plat being attached hereto and incorporated herein as Exhibit A, the perpetual Easement being further described thereon as "Proposed Ingress/Egress Easement," and having the metes and bounds description set for on Exhibit B, attached hereto and incorporated herein.

BEING a portion of the property described in a Deed dated May 20, 1996 and recorded among the Land Records of Washington County in Liber 568, folio 298 from BMB Associates, Inc. to the Grantor herein.

The Easement is granted for purposes of the construction and maintenance of a public plaza ("the Plaza") by the Grantee. Grantee and the general public shall have full and free use of the easement for the purposes herein named, including but not limited to recreational purposes, gatherings, entertainment, and for the temporary parking of school busses, tour busses, service vehicles and the like, subject to the conditions hereof.

TO HAVE AND TO HOLD the right and privilege of the Easement hereby granted to the use and benefit of the within Grantee, for so long as the property is used as a Plaza and is properly maintained by Grantee. Upon the abandonment of the Plaza by Grantee this Easement shall terminate.

And Grantor does hereby covenant that it will warrant specially the property hereby conveyed and that it will execute such other and further assurances as may be requisite.

It is understood and agreed that the Easement is granted under and subject to the following additional terms and conditions:

1. The Easement is non-exclusive, it being specifically acknowledged that Grantor owns other properties that abut the Easement Areas and that Grantor shall retain access to and use of the Easement Areas so long as not in conflict with Grantee's use of said Easement for a Plaza.

2. Should Grantee determine to abandon or relocate the Plaza, it shall restore the property to its original condition at Grantee's sole cost and expense.

3. Except as otherwise provided in this Agreement, Grantee shall not directly or through others make a fill or excavation of earth so as to cause a change in contour or inundate the land with water within the Easement Areas or Grantor's adjacent properties. However, it is understood that:

- (a) Grantee shall be permitted to construct and maintain a Plaza within the Easement substantially in accordance with Exhibit A;
- (b) With input from Grantor, Grantee shall be permitted to construct (i) the public Plaza with an impervious surface of tinted and patterned concrete or other similar material over the Easement Area, shown on Exhibit A, at Grantee's sole cost and discretion. Grantee shall ensure that any replacement surfacing will be identical to the type used in the initial installation of the Plaza;
- (c) Grantee shall be permitted to erect and maintain certain utilities within the Easement including conduits and hand boxes for lighting and security cameras. Grantee shall be required to maintain said items. With input from Grantor, Grantee shall ensure that there are cameras on Plaza which record all activities and are managed and maintained by the Hagerstown Police Department. Grantor shall permit Grantee to install a 12-count turn panel to be added to the fiber rack in Room 309 of the County Building for the new security cameras;
- (d) Grantee shall, subject to Grantor's approval, which shall not be unreasonably withheld, be permitted to remove, relocate, erect and install trees, shrubbery, landscaping, plant beds, artwork, decorative lighting, benches, fencing, signs, pet waste station and trash receptacles and other similar improvements within the Easement. Unless otherwise noted herein, all of said items shall be maintained by Grantee; and
- (e) Grantor reserves the right to perform maintenance in the Easement in the event that Grantee fails to do so.

In the event Grantor corrects or performs maintenance on any condition constituting a violation of this Deed of Easement and Maintenance Agreement, Grantee shall promptly reimburse Grantor's reasonable costs of doing so.

4. Grantee shall be solely responsible for the construction, repair and maintenance of the Plaza, and may utilize the full extent of the Easement for such purpose including, but not limited to paving and surface work of the Plaza, and erection, repair or replacement of any artwork, fixtures, landscaping and improvements located within the Easement Areas. Grantee acknowledges that the area of the Plaza has been utilized for other purposes in the past, and may contain current and abandoned tanks, utility lines, pipes, wires and other fixtures. Grantee's responsibilities in this paragraph shall include the cost, if any, that such items pose to the construction, repair and maintenance of the Plaza and its improvements.

5. Grantee shall perform routine maintenance upon all benches, lighting, artwork, fencing, signage or other similar improvements (the "structures") located within Easement, and upon the impervious surface of the Plaza, to include snow and ice removal as appropriate to the surface condition.

6. Grantee shall have the right to trim, cut, replace or remove trees, shrubbery, landscaping, plant beds, structures, or other improvements or obstructions within the Easement Areas from time to time, subject to Grantor's approval, which will not be unreasonably withheld.

7. Grantee shall be responsible for controlling access to and use of the Plaza and shall provide adequate security cameras recording activities on the Plaza. Grantee shall use reasonable measures, including use of signs, curbs, or other means, to prevent idling trucks, busses, or other vehicles from emitting exhaust into Grantor's building or HVAC or air circulation system. Tour busses for acts performing at the Maryland Theatre may remain parked on the Plaza for up to twenty-four (24) hours; school busses, service vehicles and the like may remain parked on the Plaza for no more than thirty (30) minutes.

8. Grantee shall indemnify and hold Grantor harmless from and against any claim, loss, damage or suit arising as a result of the construction, maintenance and operation of, and failure to adequately control access to the Plaza hereunder contemplated, including the Easement, except if such claim, loss, damage or suit arises solely as a result of the negligence of the Grantor, its agents servants or employees. Grantee shall maintain a policy of liability insurance in a commercially reasonable amount covering the Easement. Said policy shall name the Grantor as an additional insured and Grantee shall provide Grantor with an Additional Insured Certificate prior to commencement of construction and at reasonable intervals thereafter.

9. This Deed of Easement and Maintenance Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10. In the event that the portion of the Plaza as depicted on the Attached Exhibit A is not completed by July 1, 2023, this Deed of Easement and Maintenance Agreement shall terminate and the property shall revert back to Grantor in its original condition.

11. Grantee agrees to acquire the parcel located at 43 West Washington Street, Hagerstown, Maryland, Tax Map 0306, Parcel 2250, currently owned by Hager5 LLC ("43 West Washington St."), and convey to Grantor an easement across and upon 43 West Washington Street sufficient to permit Grantor to construct, maintain, utilize and access a trash dumpster enclosure outside the South West corner of Grantor's building at 33-35 West Washington Street, and extending onto the property at 43 West Washington Street. Such dumpster enclosure shall be accessible from the Plaza area. In the event that Grantee does not convey such an easement to Grantor on or before July 1, 2023, this Deed of Easement and Maintenance Agreement shall terminate and the property shall revert back to Grantor in its original condition.

IN WITNESS WHEREOF, the parties herein have set their hands and seals as of the date first written above.

ATTEST:

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler
Donna K. Spickler, Clerk

By: Emily Keller (SEAL)
Emily Keller, Mayor

ATTEST:

Krista L. Hart
Krista L. Hart, Clerk

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND
By: Jeffrey A. Cline (SEAL)
Jeffrey A. Cline, President

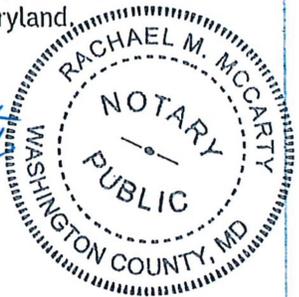
STATE OF MARYLAND, WASHINGTON COUNTY, to-wit:

I HEREBY CERTIFY that on this 28th day of May, 2021, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Jeffrey A. Cline, President of the Board of County Commissioners of Washington County, Maryland, who acknowledged the foregoing Deed of Easement and Maintenance Agreement to be the act and deed of the Board of County Commissioners of Washington County, Maryland, that he is authorized to make this acknowledgment and that the within deed is not a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of the Board of County Commissioners of Washington County, Maryland.

WITNESS my hand and Official Notarial Seal.

My Commission expires: 12/12/2023

Rachael M. McCarty
Notary Public



STATE OF MARYLAND, WASHINGTON COUNTY, to-wit:

I HEREBY CERTIFY, that on this 25th day of May, 2021, before me, a Notary Public in and for the State and County aforesaid, personally appeared Emily Keller, Mayor of the City of Hagerstown, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged the foregoing instrument to be his act and deed on behalf of the Mayor and Council of the City of Hagerstown, Maryland, and did certify that he is authorized to execute this Agreement on its behalf, and that the consideration indicated is true and correct.

WITNESS my hand and Official Notarial Seal.

Donna Kay Spickler

Notary Public

My Commission expires: December 8, 2022

I certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland, but that the undersigned did not perform a title search, title examination or make any certification as to title.



Jason Morton

Approved as to form and
Legal sufficiency:


Assistant
County Attorney

Accepted and approved for recording
this 1st day of June, 2021.

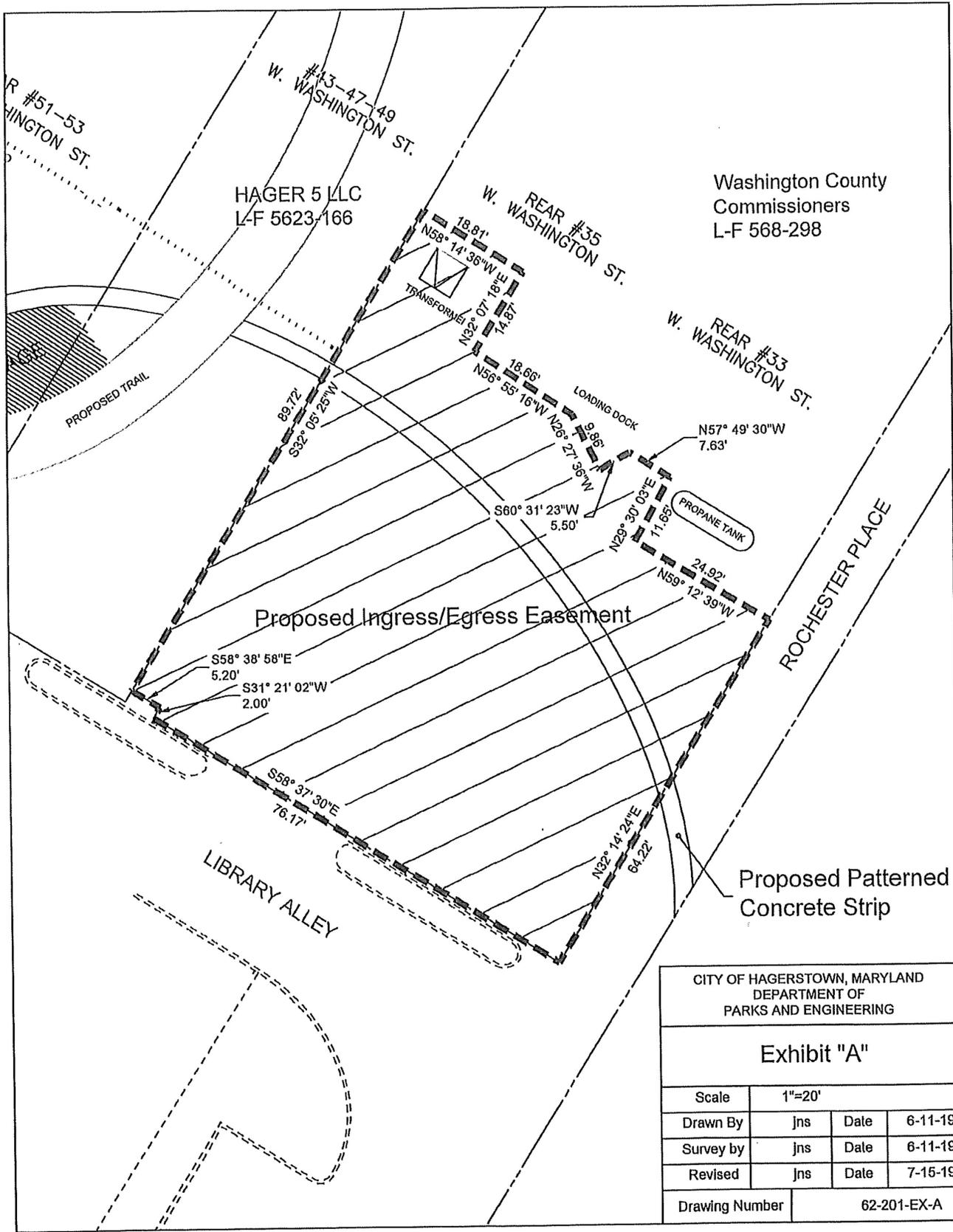


Clerk, Board of County Commissioners of
Washington County, Maryland

Accepted and approved for
Recording this 1 day of
June, 2021.


Real Property Administrator

MAIL TO:
City of Hagerstown
City Hall
1 E. Franklin Street
Hagerstown, MD 21740



Washington County
Commissioners
L-F 568-298

HAGER 5 LLC
L-F 5623-166

Proposed Ingress/Egress Easement

Proposed Patterned
Concrete Strip

CITY OF HAGERSTOWN, MARYLAND DEPARTMENT OF PARKS AND ENGINEERING			
Exhibit "A"			
Scale	1"=20'		
Drawn By	jns	Date	6-11-19
Survey by	jns	Date	6-11-19
Revised	jns	Date	7-15-19
Drawing Number	62-201-EX-A		

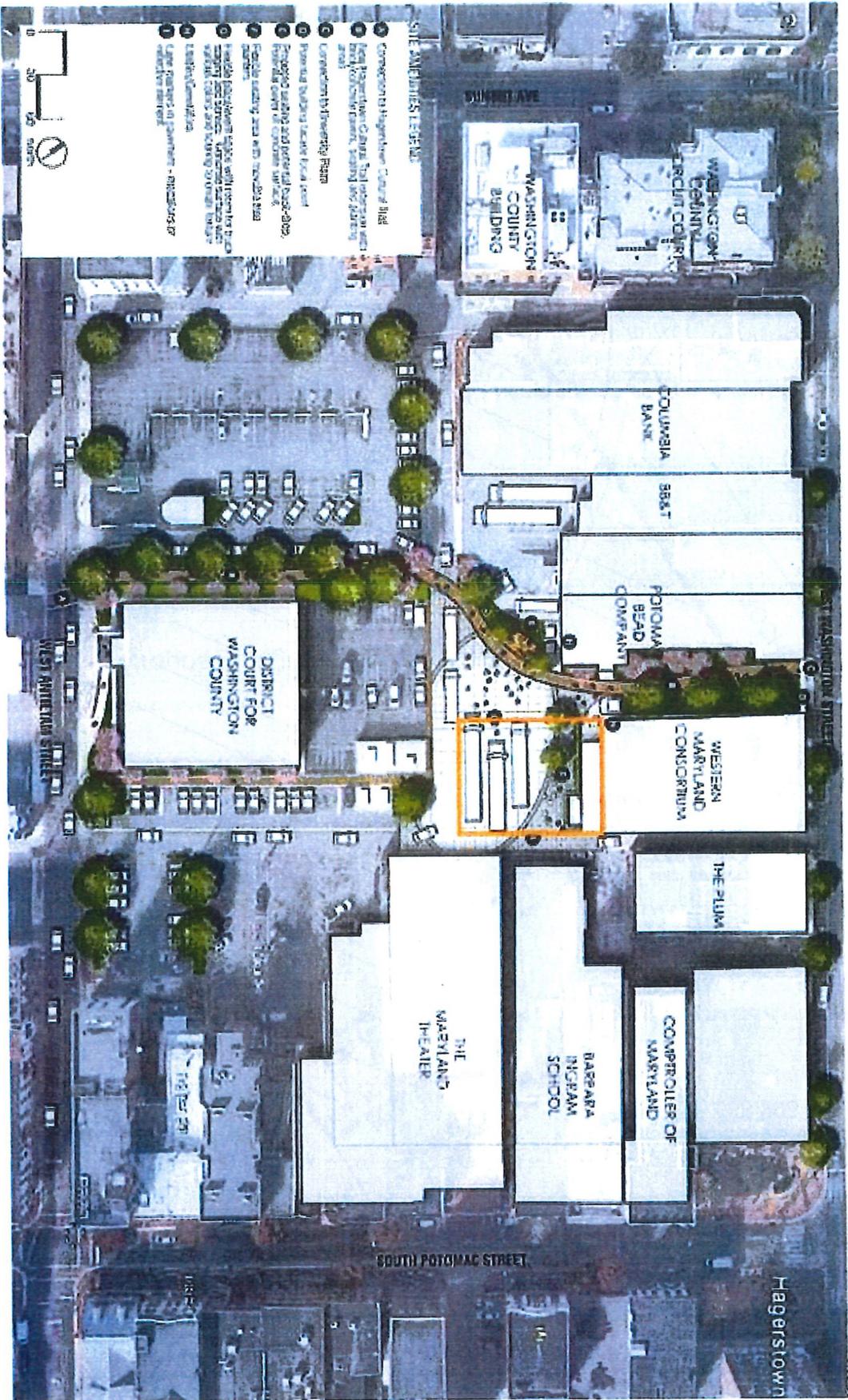
0-21-04

Exhibit B

Description for UIP Plaza Easement for the rear of 33 & 35 W Washington Street:

Beginning at a point at the intersection of the western ROW of the public alley known as Rochester Place and the northern Right of Way of the public alley known as Library Alley, thence with the said western Right of Way of Rochester Place, N 32° 14' 24" E a distance of 64.22 feet to point perpendicular to a line of bollards surrounding a propane tank and then leaving said alley Right of Way and following with the line of bollards the following two courses: N 59° 12' 39" W a distance of 24.92 feet and thence N 29° 30' 03" E a distance of 11.65 feet to the loading dock located at the rear of the building known as 33 & 35 West Washington Street thence following the back of the loading dock the following five courses: N 57° 49' 30" W a distance of 7.63' to a point, thence S 60° 31' 23" W a distance of 5.50 feet to a point thence N 26° 27' 36" W a distance of 9.86 feet to a point thence N 56° 55' 16" W a distance of 18.66 feet thence N 32° 07' 18" E a distance of 14.87 feet to a point on the back of the building thence following the back of the building N 58° 14' 36" W a distance of 18.81 feet to the eastern line of the property known as 43-47-49 West Washington Street thence following said property S 32° 05' 25" W a distance of 89.72 feet to the northern Right of Way of Library Alley thence with the said Right of Way the following three courses: S 58° 38' 58" E a distance of 5.20 feet to a point thence S 31° 21' 02" W a distance of 2.0 feet to a point thence S 58° 37' 30" E a distance of 76.17 feet to the point of beginning and containing 0.1413 acres m/l.

0-21-04



0-21-04