

**GROUND LEASE**

between

City of Vancouver, a Washington municipal corporation (“*Landlord*”)

and

[Holland] (“*Tenant*”)

Dated: [redacted]

## Table of Contents

1.	Definitions.....	1
2.	Lease of Premises .....	6
3.	Acceptance of Premises .....	6
4.	Representations; Quiet Enjoyment .....	8
4.1	Landlord’s Representations.....	8
4.2	Quiet Enjoyment .....	9
4.3	Tenant’s Representations .....	9
5.	Lease Term.....	9
6.	Rent.....	9
6.1	Base Rent .....	10
6.2	CPI Adjustments of Fixed Rent .....	11
6.3	Revaluation Adjustments of Fixed Rent.....	11
6.4	Redevelopment Revaluation .....	13
6.5	Payment of Fixed Rent.....	13
6.6	Additional Rent.....	13
6.7	Late Charge.....	14
6.8	Payment Without Offset or Abatement.....	14
6.9	Absolute Net Lease .....	15
7.	New Improvements.....	16
7.1	Construction of New Improvements.....	16
7.2	Indemnity .....	21
7.3	Liens.....	22
7.4	Fixtures and Equipment .....	22

7.5	Contractor Insurance .....	23
7.6	Permits; Compliance with Laws .....	24
7.7	Landlord’s Cooperation .....	24
7.8	Guaranty.....	24
7.9	Deposit .....	24
8.	Ownership and Removal of Improvements .....	25
9.	Utilities.....	25
10.	Taxes and Assessments.....	25
10.1	Real Property Taxes and Assessments.....	25
10.2	Personal Property Taxes .....	26
10.3	Other Taxes.....	26
10.4.	New Assessment District Decisions .....	26
11.	Maintenance and Repair .....	26
11.1	Landlord’s Repairs.....	26
11.2	Tenant’s Repairs .....	26
11.3	Rights of Landlord .....	27
11.4	Condition at End of Lease.....	27
12.	Modifications, Additions and Replacements .....	27
13.	Indemnification and Waiver of Subrogation.....	28
13.1	Indemnification by Tenant.....	28
13.2	Waiver of Subrogation.....	28
14.	Insurance .....	29
14.1	Required Coverage.....	29
14.2	Insurance Policy Requirements.....	30
14.3	Landlord’s Acquisition of Insurance .....	30

14.4	Application of Insurance Proceeds .....	31
15	Damage or Destruction .....	31
15.1	Damage Prior to Last Five Years.....	31
15.2	Damage During Last Five Years.....	31
16.	Condemnation.....	32
16.1	Effect of Taking .....	32
16.2	Allocation of Award for Total Condemnation.....	33
16.3	Allocation of Award for Temporary Condemnation .....	33
16.4	Allocation of Award for Partial Condemnation.....	33
16.5	Abatement of Rent .....	33
16.6	Tenant’s Personal Claims .....	33
17.	Assignment and Subletting .....	34
17.1	Assignment of Lease or Sublease of Entire Property .....	34
17.2	Subletting .....	35
17.3	Non-Disturbance of Residential Space Leases .....	35
17.4	Non-Disturbance of Commercial Space Leases .....	36
17.5	Security Assignment of Space Leases .....	38
17.6	Rent Rolls and Other Information.....	38
17.7	Rent Rolls and Other Information.....	38
18.6	Assignment by Landlord.....	38
17.8	Condominium Conversion .....	39
19.	Leasehold Financing .....	42
18.1	Right to Encumber .....	42
18.2	Covenants of Landlord.....	43
18.3	Obligations of Tenant .....	46

18.4	Landlord’s Lien Waivers .....	47
18.5	Landlord’s Leasehold Financing.....	47
19.	Default.....	50
19.1	Events of Default .....	50
19.2	Remedies.....	51
19.3	Effect of Debt and Equity Default .....	52
19.4	Landlord’s Remedies Cumulative.....	52
19.5	Waiver of Trial by Jury.....	53
19.6	Landlord’s Cure .....	53
19.7	Legal Expenses .....	53
19.8	No Punitive Damages .....	53
19.9	Tenant’s Remedies in the Event of Default by Landlord .....	53
20.	Arbitration Provisions.....	54
20.1	Issues Subject to Arbitration.....	54
20.2	Selection of Arbitrator .....	54
20.3	Arbitration Procedure.....	54
20.4	Confidentiality .....	55
21.	Bankruptcy Provisions.....	55
21.1	Assumption of Lease.....	55
21.2	Assignment of Lease.....	56
21.3	Adequate Protection.....	56
22.	Hazardous Substances.....	56
23.	General Provisions.....	58
23.1	Right of Inspection.....	58
23.2	Removal of Property.....	58

23.3	Successors and Assigns.....	58
23.4	Notices .....	59
23.5	Holdover .....	60
23.6	Section Titles .....	60
23.7	Binding Effect.....	60
23.8	Entire Agreement.....	60
23.9	Time of Essence.....	60
24.10	Interpretation.....	60
23.11	Memorandum.....	60
23.12	Estoppel Certificate.....	61
23.13	Right of First Opportunity to Purchase Landlord’s Interest .....	61
23.14	Right of First Opportunity to Purchase Tenant’s Interest.....	62
23.15	Consents.....	62
23.16	Right to Purchase Landlord’s Interest.....	63
23.17	Non-merger of Estates .....	65
23.18	Attorney Fees for NDAs and Estoppels.....	65
23.19	Landlord’s Limitation of Liability .....	65
23.20	Consents.....	65
23.21	Brokerage.....	65

## GROUND LEASE

THIS GROUND LEASE (“*Lease*”) is dated the \_\_\_\_ day of December, 2019, and is by and between City of Vancouver, a Washington municipal corporation (“*Landlord*”), and [Holland], a \_\_\_\_\_ limited liability company (“*Tenant*”).

1. **Definitions**. As used in this Lease, the following terms are defined as follows:
  - 1.1. “*Adjustment Date*” is defined in Section 6.1(b) of this Lease.
  - 1.2. “*Affiliate*” of any Person, means any Person which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person.
  - 1.3. “*Base Rent*” is defined in Section 6 of this Lease.
  - 1.4. “*Certificate of Completion*” is defined in Section 7.1(j) of this Lease.
  - 1.5. “*Commencement Date*” means the date of this Lease as specified above.
  - 1.6. “*Condemnation*” means: (a) any temporary or permanent taking of (or of the right to use or occupy) all or part of the Property by condemnation, eminent domain, or any similar proceeding; (b) any action by any governmental agency not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or part of the Premises but creating a right to compensation, such as a change in grade of any street upon which the Land abuts; or (c) any transfer of all or any part of the Property to a governmental agency in lieu of or under threat of condemnation.
  - 1.7. “*Condemnation Award*” means the entire amount of any award(s) paid or payable (whether or not in a separate award) to Landlord or Tenant after the Commencement Date because of or as compensation for any Condemnation, including, without limitation: (1) any award made for any Land and/or any Improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the property interest that is the subject of the Condemnation; (3) any interest, costs and attorneys’ fees payable on account of such award; and (4) any other sums payable on account of such Condemnation except sums referred to in Section 16.6.
  - 1.8. “*Construction*” or “*Construct*” means and includes demolition, mobilization, excavation and other site preparation, construction operations, demobilization, any and all labor, work or steps necessary or convenient to the construction of a building, facility or improvement up to final completion and provision of all materials and equipment incorporated or to be incorporated in such construction.
  - 1.9. “*Cure Period Expiration*” is defined in the Guaranty.

- 1.10. **“Cure Period Termination”** is defined in the Guaranty.
- 1.11. **“Date of Condemnation”** shall mean the date upon which title to the Property or a portion thereof passes to and vests in the condemning authority or the effective date of any order, stipulation or agreement for possession which is issued prior to the date title vests in the condemning authority.
- 1.12. **“Debt and Equity Cure”** is defined in the Guaranty.
- 1.13. **“Debt and Equity Default”** is defined in the Guaranty.
- 1.14. **“Deposit”** is defined in Section 7.9 of this Lease.
- 1.15. **“Determination Notice”** is defined in Section 6.3 of this Lease.
- 1.16. **“Environmental Law”** means all federal, state, and local laws, ordinances, rules regulations, orders and directives governing hazardous waste, hazardous substances, infectious, bio-hazardous, biomedical, radiological or radioactive substances, discharges of pollutants to soil or groundwater, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use, storage or disposal, natural resource restoration and employee or community right-to-know requirements.
- 1.17. **“Event of Default”** is defined in Section 19.1 of this Lease.
- 1.18. **“Extended Cure Period”** is defined in the Guaranty.
- 1.19. **“Force Majeure”** means strikes, lockouts or other labor or industrial disturbances, civil disturbance, terrorist events, riots, lightening, earthquake, fire, storm, hurricane, flood, washout, explosion, acts of God, shortages of labor or materials because of priority or similar regulations or order of any governmental or regulatory body, embargo, war, or any other unforeseeable cause or event beyond the reasonable control of a party, not including, however, lack of funds or inability to obtain financing.
- 1.20. **“Guaranty”** is defined in Section 7.8 of this Lease.
- 1.21. **“Hazardous Substance”** means any substance, material, or waste which is: (1) defined as a “hazardous waste”, “hazardous material”, “hazardous substance”, “extremely hazardous waste”, “restricted hazardous waste”, “pollutant” or any other terms comparable to the foregoing terms under any provision of Washington law or federal law; (2) petroleum and any fraction thereof; (3) asbestos and asbestos containing materials; (4) polychlorinated biphenyls; (5) radioactive materials; (6) mold; (7) Methyl Tertiary Butyl Ether (“MTBE”); or (8) determined by Washington, federal or local governmental authority to be capable of posing a risk of injury to health, safety, property or the environment. Without limiting the foregoing, Hazardous Substance means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a



hazardous, toxic or radioactive substance, or other similar term, by any Environmental Laws including any federal, state or local environmental statute, regulation or ordinance presently in effect that may be promulgated in the future, as such as statutes, regulations and ordinances may be amended from time to time.

- 1.22. **“Improvements”** means any improvements located on the Land and, in the case of the Sidewalk Overhangs, which overhang public sidewalks adjacent to the Land, including, but not limited to, the existing improvements and the New Improvements hereafter constructed by Tenant on or under the Land, or any portion thereof, including all fixtures and appurtenances thereto.
- 1.23. **“Index”** means the Consumer Price Index - All Urban Consumers, All Items (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor (the **“Bureau”**); provided, however, that (a) if the Bureau publishes a revised version of the Index, then the revised version shall be used, (b) if the Index is discontinued, the parties shall follow any official consumer price index, whether so named or designated or not, issued by any authorized agency of the United States which supplants the Index and (c) if the Index is discontinued without being supplanted, the parties shall use any comparable general wholesale or retail price index for the United States reasonably selected by Landlord as being the closest to the Index and reasonably approved by Tenant.
- 1.24. **“Initial Term”** is defined in Section 5 of this Lease.
- 1.25. **“Land”** means collectively: (a) the real property owned by Landlord in the City of Vancouver, Clark County, Washington, and legally described on **Exhibit A** attached hereto; (b) all right, title and interest of Landlord, if any, in and to the land lying in the bed of any street adjoining the Land to the centerline of such street or highway; (c) the appurtenances and all of the estate and rights of Landlord in and to the Land; (d) any strips or gores adjoining the Land.
- 1.26. **“Landlord’s Interest”** means the Land and Landlord’s interest in the Improvements and this Lease.
- 1.27. **“Laws”** means all federal, state and local laws, ordinances, regulations, and rules relating to the development and operation of the Property, including without limitation all building, zoning, planning, subdivision, fire, traffic, safety, health, disability, labor, discrimination, environmental, air quality, wetlands, shoreline, and flood plain laws, ordinances, regulations and rules and all government and private covenants, conditions and restrictions applicable to the Property.
- 1.28. **“Leasehold Estate”** means the Tenant’s leasehold estate in the Premises and all Tenant’s rights, privileges and options of any kind or nature under this Lease, upon and subject to all of the terms and conditions of this Lease, and any part of such leasehold estate and direct or indirect interest in such leasehold estate.

- 1.29. **“Leasehold Mortgage”** means a mortgage, deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits, which constitutes a lien on Tenant’s Leasehold Estate and on the fee interest of Tenant in any Improvements during the term of this Lease, including any modification or extension thereof.
- 1.30. **“Leasehold Mortgagee”** means the holder of a Leasehold Mortgage.
- 1.31. **“Lease Term”** means the term of this Lease as set forth in Section 5, including any extensions.
- 1.32. **“Lease Year”** means, with respect to the first Lease Year, the period beginning on the Commencement Date and ending on December 31, 2020, and thereafter each consecutive twelve (12) month period commencing on January 1<sup>st</sup> and ending on December 31<sup>st</sup> during the Lease Term.
- 1.33. **“New Improvements”** means the improvements, fixtures and appurtenances to be constructed or installed by Tenant on, over or under the Land, including the Sidewalk Overhangs, after demolition of the existing improvements, which shall at a minimum be comprised of a multi-story, mixed-use building, landscaping and related improvements that comply with the City of Vancouver Municipal Code meeting the following minimum standards: (i) a minimum floor-area ratio of no less than 5.5:1 (including parking); (ii) a four-story office tower of a minimum of 80,000 gross square feet (plus or minus 2,500 square feet), a five-story residential tower with 105-110 residential units and a two-story podium upon which the office and residential towers will be constructed; (iii) use of high quality materials brick, stone or glass for exterior (no exterior insulation and finish system or wood siding (wood beam accents are acceptable); (iv) garage access located off of 9<sup>th</sup> Street and 8<sup>th</sup> Street; (v) 10,000 square feet of ground floor retail or restaurant located along Columbia, West 8th and Washington Streets; (vi) a minimum 110 parking stalls in a two-level internal garage; (vii) an open and windowed ground-level façade along Columbia, West 8th and Washington Streets; (viii) full frontage improvements (i.e. replacement of sidewalks, curbs, street lights and trees); (ix) all overhead utilities on the rights-of-way abutting the Property shall be located underground; and (ix) at a minimum: (A) Leadership in Energy Efficiency and Design (LEED) designation, (B) Earth Advantage Commercial Certificate, (C) Green Globes Certification, or (D) other equivalent sustainable design standard reasonably acceptable to the Landlord.
- 1.34. **“Option Fair Market Value”** shall mean the amount in cash that a well-informed buyer, willing but not obligated to buy the Land would pay, and that a well-informed seller, willing but not obligated to sell it, would accept, based upon the “Highest and Best Use” of the Land as if vacant without reference to this Lease or actual improvements on the Land and where **“Highest and Best Use”** shall mean that reasonable and probable use from among reasonably probable and legal alternative uses found to be physically possible, legally permissible, appropriately supported, financially feasible, and which supports the highest present market

value for the Land as of the effective date of such appraisal. The Option Fair Market Value of the Land shall be for the Land only and shall not include any value attributable to the Land by reason of the then existing improvements or the existence of this Lease.

- 1.35. **“Overhang Redesign”** is defined in Section 7.1(d)B of this Lease.
- 1.36. **“Overhang Rent”** is defined in Section 6.1(b) of this Lease.
- 1.37. **“Parking License”** means that certain Parking License attached hereto at Exhibit \_\_\_ between Landlord and Tenant, executed and delivered contemporaneously with the execution of this Lease, concerning the grant by Landlord to Tenant of a license to park up to \_\_\_\_\_ vehicles in the Park ‘n Go Vancouvercenter Public Parking Garage.
- 1.38. **“Partial Condemnation”** means any Condemnation which does not constitute a Total Condemnation or a Temporary Condemnation.
- 1.39. **“Person”** means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, association or other entity.
- 1.40. **“Premises”** means the Land and, until demolished or incorporated into the New Improvements as permitted under this Lease, the existing improvements on the Land.
- 1.41. **“Property”** means the Land and all Improvements now or hereafter located thereon.
- 1.42. **“Renewal Term”** is defined in Section 5 of this Lease.
- 1.43. **“Rent”** means and includes all Base Rent, Additional Rent, Overhang Rent (if any) and other amounts payable by Tenant under this Lease.
- 1.44. **“Replacement Improvements”** is defined in Section 7.1 of this Lease.
- 1.45. **“Revaluation Date”** is defined in Section 6.3 of this Lease.
- 1.46. **“Revaluation Fair Market Value”** shall mean the amount in cash that a well-informed buyer, willing but not obligated to buy the Land would pay, and that a well-informed seller, willing but not obligated to sell it, would accept, based on the land as if vacant without reference to the existence of this Lease but assuming any development would be limited to the floor area ratio, permitted height and square footage and the same ratio of uses (i.e. office, residential, retail and parking) of the then existing improvements. The Revaluation Fair Market Value of the Land shall be for the Land only and shall not include any value attributable to the Land by reason of the then existing improvements or the existence of this Lease.

- 1.47. **“Sidewalk Overhangs”** means the portions of the currently planned New Improvements that will overhang public sidewalks a maximum of 5 feet on all four façades at a height of not less than 12 feet from the sidewalks.
- 1.48. **“Space Lease”** is defined in Section 17.2 of this Lease.
- 1.49. **“Space Tenant”** means the tenant under a Space Lease.
- 1.50. **“Temporary Condemnation”** means a Condemnation of the temporary right to use or occupy all or part of the Property.
- 1.51. **“Tenant’s Interest”** means Tenant’s interest in this Lease, the Improvements and the Parking License.
- 1.52. **“Total Condemnation,”** means the Condemnation of the entire Property or the Condemnation of so much of the Property as in Tenant’s reasonable determination (with Leasehold Mortgagee’s consent) renders the remaining Property Uneconomic. In the event of a dispute between Landlord and Tenant as to whether the remaining Property is Uneconomic, Landlord and Tenant agree that the issue shall be submitted to binding arbitration provided in Section 20 below.
- 1.53. **“Uneconomic”** means (1) that the Property remaining after a Condemnation cannot be used for its previously intended purpose; (2) that the Property remaining after a Condemnation is subject to material impairment of access to parking facilities benefiting, or any material service necessary for profitable operation of, the Property; (3) Tenant reasonably determines that the cost of restoration of the Improvements after a Condemnation will exceed the fair market value of the Property as restored; (4) after restoration the remaining Property cannot comply with applicable Laws; (5) after restoration the remaining Property cannot reasonably be operated for: use or uses and in a manner substantially consistent with past practice; or on a scale that is smaller but nevertheless profitable (after taking into account the payment of all expenses, including Rent) and reasonably feasible; or (6) the remaining Property cannot be developed or operated in a commercially reasonable manner.
- 1.54. **“Valuation Negotiation Date”** is defined in Section 6.3 of this Lease.
2. **Lease of Premises.** Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord for the term and on the conditions set out in this Lease.
3. **Acceptance of Premises.** TENANT HAS INSPECTED THE PREMISES AND ACCEPTS THE PREMISES IN ITS “AS IS” “WHERE IS” CONDITION SUBJECT TO ALL FAULTS AND IN ITS CONDITION EXISTING ON THE DATE HEREOF, BUT SUBJECT TO LANDLORD’S OBLIGATIONS IN SECTION 7.1(m). TENANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT IS GROUND LEASING THE PREMISES ON AN “AS IS WITH ALL FAULTS” BASIS AND,

EXCEPT FOR LANDLORD'S EXPRESS REPRESENTATIONS AND WARRANTIES IN THIS LEASE, THAT TENANT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE LANDLORD AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PREMISES (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PREMISES; (D) THE DEVELOPMENT POTENTIAL OF THE PREMISES, AND THE PREMISES' USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PREMISES FOR ANY PARTICULAR PURPOSE INCLUDING WITHOUT LIMITATION THE NEW IMPROVEMENTS; (E) THE ZONING OR OTHER LEGAL STATUS OF THE PREMISES OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PREMISES; (F) THE COMPLIANCE OF THE PREMISES OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (G) THE PRESENCE OR ABSENCE OF ANY ABOVE-GROUND OR UNDERGROUND STORAGE TANKS OR HAZARDOUS SUBSTANCES IN, ON, AT, UNDER OR ABOUT THE PREMISES OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (H) THE CONDITION OF TITLE TO THE PREMISES. TENANT AFFIRMS THAT TENANT HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE LANDLORD OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PREMISES FOR ANY PARTICULAR PURPOSE, AND THAT THE LANDLORD MAKES NO WARRANTY THAT THE PREMISES IS FIT FOR ANY PARTICULAR PURPOSE INCLUDING WITHOUT LIMITATION THE NEW IMPROVEMENTS. TENANT ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PREMISES AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PREMISES (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). TENANT UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PREMISES' LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE,

SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

Without limiting the generality of the foregoing, Tenant hereby expressly releases Landlord and its officers, agents, directors, representatives, shareholders, members, subsidiaries, affiliates, related entities, partners, employees, attorneys and lenders from and waives all claims against such parties for Tenant's fees, costs, losses and liabilities, including without limitation development cost increases, due to the removal or remediation of any contaminants, Hazardous Substances, wastes or materials on the Property as of the Commencement Date. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord harmless from all claims, liability, losses, costs or fees, including without limitation reasonable attorney fees and costs incurred prior to the date Tenant undertakes Landlord's defense, arising out of or pertaining to Tenant's use, removal or remediation of Hazardous Substances in, on at or emanating from the Property. Tenant shall retain the right to obtain indemnity or recovery for any liability or costs Tenant incurs relating to contaminants, Hazardous Substances, wastes or materials on the Property from any other potentially responsible party under appropriate state or federal environmental laws. This section shall survive the expiration or earlier termination of this Lease.

Tenant has reviewed and approved all matters of record affecting Landlord's title to the Premises and Landlord has obtained for the benefit of and delivered to Tenant a leasehold policy of title insurance with coverage in the amount of **[\$[Amount of Project Budget]**, insuring Tenant's leasehold interest in the Premises under this Lease.

4. **Representations; Quiet Enjoyment.**

4.1. **Landlord's Representations.** Landlord represents and warrants to Tenant that, as of the Commencement Date: (a) Landlord is a Washington municipal corporation, duly organized and validly existing under the laws of the State of Washington, and is duly authorized to conduct its business in the State of Washington; (b) Landlord holds fee simple title to the Premises subject to any conditions and restrictions of record and that there are no unrecorded conditions, restrictions, encumbrances or leases affecting the Property; (c) Landlord has all the requisite right, power, title and authority to enter into this Lease and to perform its obligations hereunder; (d) no consent or approval of any other person is necessary for the effectiveness of Landlord's obligations under this Lease; (e) to Landlord's knowledge, except as may be disclosed in the title insurance policy obtained by Tenant under Section 2 above or in any preliminary commitment for such title policy, there is no action, suit, proceeding or investigation pending or threatened before any agency, court or other governmental authority which relates to the Premises or the use thereof; and (f) except as may be disclosed in the title insurance policy obtained by Tenant under Section 3 above or in any preliminary commitment for such title policy, there is no contract, option, right of first refusal, lease or other agreement or instrument presently existing which grants to any other person or entity the present or future right to purchase, occupy, lease or otherwise acquire any interest in any of the Premises.

- 4.2. **Quiet Enjoyment.** Subject to and upon Tenant compliance with the terms and conditions of this Lease, Tenant shall have quiet enjoyment of the Property and all of its rights under this Lease during the Lease Term without molestation by Landlord or anyone claiming by, through or under Landlord.
- 4.3. **Tenant's Representations.** Tenant represents and warrants to Landlord that, as of the Commencement Date: (a) Tenant is a limited liability company, duly organized and validly existing under the laws of the State of [REDACTED] and is duly authorized to conduct business in the State of Washington; (b) no consent or approval of any other person is necessary for the effectiveness of Tenant's obligations under this Lease, (c) Tenant has all the requisite right, power, and authority to enter into this Lease and to perform all of its obligations hereunder; (d) the execution and delivery of this Lease and the performance of Tenant's obligations hereunder do not and will not conflict with or result in the breach of any condition or provision of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of Tenant by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Tenant is a party or which is or purports to be binding upon Tenant or which affects Tenant; (e) no further action by any governmental authority is necessary to make this Lease a valid instrument binding upon Tenant in accordance with its term; (f) no action at law or in equity and no investigation or other proceeding whatsoever is now pending or threatened to liquidate or dissolve Tenant, or to declare any of its rights, powers or privileges to be null or void or otherwise than in full force and effect, or to obtain any decree, order, judgment or other judicial determination or administrative or other ruling which will or may impede or detract from any of the rights, powers or privileges vested in or claimed by Tenant; and (g) there is no action or proceeding pending or, to Tenant's knowledge, threatened against Tenant which challenges or impairs Tenant's ability to execute or perform its obligations under this Lease.
5. **Lease Term and Renewal Term.** The Term of this Lease shall be for sixty (60) years, together with the balance of calendar year 2019, beginning on the Commencement Date and ending on December 31<sup>st</sup> of the sixtieth (60th) complete calendar year after the Commencement Date unless sooner terminated as provided in this Lease (the "***Initial Term***"). Provided that there is not then an uncured Event of Default and that no Event of Default occurs thereafter and until the time when the Renewal Term is scheduled to commence, Tenant shall have the right to extend the Term of this Lease for one (1) additional thirty-nine (39) year term (the "***Renewal Term***") so long as Tenant gives Landlord written notice of Tenant's election to extend the Term of this Lease no earlier than the forty-fifth (45th) Lease Year and no later than the end of the fifty-eighth (58th) Lease Year. If Tenant does not timely provide the written notice of Renewal Term, Renewal Term shall automatically expire and be of no further force or effect. Time is of the essence and Tenant acknowledges that failure to timely provide the notice of the Renewal Term shall conclusively waive the Renewal Term.
6. **Rent.**

6.1. **Base Rent.**

- (a) Subject to the adjustments required by Sections 6.2, 6.3 and 6.4 below, beginning on the Commencement Date and ending on December 31<sup>st</sup> of the twenty-ninth (29<sup>th</sup>) Lease Year, Tenant shall pay to Landlord, as rent (“**Base Rent**”), the annual sums set forth below:

<b>Lease Years</b>	<b>Annual Rent</b>	<b>Monthly Rent</b>
Lease Year 1 through earlier of substantial completion or Lease Year 3	\$30,000	\$2,500
The balance of Lease Years 1 through 3 if substantial completion prior to the end of Lease Year 3 and Lease Year 4	\$66,500	\$5,500
Lease Years 5-10	\$133,200, subject to <u>Section 6.2</u>	\$11,100
Lease Year 11-29	\$166,500 or the prior year’s Base Rent as increased by <u>Section 6.2</u> whichever is greater	\$13,875

Beginning with the fifth (5<sup>th</sup>) Lease Year, the Base Rent shall be adjusted in accordance with Sections 6.2, 6.3 and 6.4 below. The annual Base Rent shall be paid in advance in equal monthly installments on the first day of each month. As of the Commencement Date, Tenant has paid the Base Rent for the month of December 2019.

- (b) **Sidewalk Overhang Rent.** If VMC Title 20 is amended to allow the Sidewalk Overhang, Landlord and Tenant will pay rent to Landlord to occupy the public right of way (“**Overhang Rent**”). The initial Overhang Rent for shall be the lesser of (1) the amount required in any amendment to VMC Title 20 or (2) the product of \$1.40 multiplied by the useable square feet of the New Improvements in the airspace that overhangs the public right of way such that any overhangs that overlap (that is, are stacked or repeat on multiple floors) will be counted on a floor-by-floor basis. Overhang Rent will increase annually by the CPI Adjustment (defined below), subject to a 3% annual ceiling. Overhang Rent for the New Improvements shall commence upon issuance by Landlord of the Certificate of Completion. Overhang Rent, if any, will be in addition to Base Rent. If the City does not amend VMC Title 20, then Landlord will subject to the terms and conditions of this Lease approve smaller New Improvements pursuant to the Overhang Redesign that are consistent with



code requirements subject to the then-applicable City administrative fee and agree to an updated construction and delayed Base Rent schedule to accommodate the redesign of the New Improvements, and no Overhang Rent will be due under this Lease.

6.2. **CPI Adjustments of Fixed Rent.** On January 1<sup>st</sup> of the fifth Lease Year, and on each one (1) year anniversary thereafter (including each January 1<sup>st</sup> following the Renewal Date if Tenant elects to extend the Term of this Lease pursuant to Section 5 above), but not on any Revaluation Date (each, an “***Adjustment Date***”), the Base Rent shall be increased (but never decreased) by a percentage equal to the percentage increase in the Index (each a “***CPI Adjustment***”) published most recently prior to the Adjustment Date over the Index published the year before. Notwithstanding the foregoing, except as set forth in Sections 6.3 and 6.4 below, in no event shall the Fixed Rent on an Adjustment Date in any Lease Year after the Fifth Lease Year increase by more than three percent (3%) over the Base Rent for the previous Lease Year.

6.3. **Revaluation Adjustments of Base Rent.**

(a) On January 1<sup>st</sup> of the thirtieth (30<sup>th</sup>) and forty-fifth (45<sup>th</sup>) Lease Years and, if the Renewal Term is applicable, on January 1<sup>st</sup> of the sixtieth (60<sup>th</sup>) and eightieth (80<sup>th</sup>) Lease Years (each, a “***Revaluation Date***”) the annual Base Rent shall be increased to the greater of (a) the CPI Adjustment amount or (b) five percent (5%) of the Revaluation Fair Market Value. Notwithstanding the foregoing, in no event shall the Base Rent on a Revaluation Date increase by more than fifteen percent (15%) over the Base Rent for the immediately previous Lease Year.

(b) If Landlord and Tenant are unable to agree on the Revaluation Fair Market Value of the Land by July 1<sup>st</sup> immediately preceding the Revaluation Date (the “***Valuation Negotiation Date***”), then each party shall give written notice to the other no later than July 15<sup>th</sup> immediately preceding the Revaluation Date (the “***Determination Notice***”) setting forth its respective determination of the Revaluation Fair Market Value of the Land which shall be based on a full appraisal report prepared in accordance with the then current standards of the Uniform Standards of Professional Appraisal Practice (or the then equivalent appraisal standards if USPAP standards are no longer published and relied upon in appraisal practice). Landlord and Tenant shall simultaneously exchange copies of the appraisal report no later than three (3) days after the issuance of the last Determination Notice. If, however, either Landlord or Tenant fails to give its Determination Notice by the deadline and fails to cure such failure within thirty (30) days after notice from the other party, then the determination set forth in the other party’s Determination Notice will be the Revaluation Fair Market Value of the Land on the applicable Revaluation Date. If the lower determination of the Revaluation Fair Market Value of the Land set forth in the Determination Notices is not less than ninety five percent

(95%) of the higher determination, then the parties' determinations shall be averaged and the average shall be the Revaluation Fair Market Value of the Land. If the lower determination of the Revaluation Fair Market Value of the Land set forth in the Determination Notices is less than ninety-five percent (95%) of the higher determination, then, unless the parties agree, on or before October 1 immediately preceding the Revaluation Date, on one arbitrator to resolve the matter, the matter shall be submitted for decision to a panel of three (3) arbitrators. No later than October 15 preceding the Revaluation Date, Landlord and Tenant shall each appoint one arbitrator who is a designated member in good standing of the Appraisal Institute (or has a similar designation from any successor to the Appraisal Institute), with at least five (5) years' full-time commercial appraisal experience in the Vancouver, Washington area. The two arbitrators so appointed shall within fifteen (15) days after the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth above for qualification of the initial two arbitrators and, in addition, who is neutral and has not rendered services to either Landlord or Tenant or their respective Affiliates within the preceding five (5) year period. Failing such agreement, either Landlord or Tenant shall have the right to petition for the appointment of the third arbitrator by the Presiding Judge of the Superior Court of Clark County. The determination of the arbitrators shall be made by majority vote of the arbitrators and shall be limited solely to the issue of whether Landlord's or Tenant's proposed Revaluation Fair Market Value of the Land set forth in its Determination Notice is the closest to the actual Revaluation Fair Market Value of the Land. The arbitrators shall not have the power to choose any other value or to add to, modify or change any of the provisions of this Lease. The three arbitrators shall within thirty (30) days after the appointment of the third arbitrator reach a decision as to whether the parties shall use Landlord's or Tenant's proposed Revaluation Fair Market Value of the Land, and shall notify Landlord and Tenant thereof in writing. The arbitrators shall be directed to use best efforts to reach their decision on the Revaluation Fair Market Value of the Land on or before December 15 immediately preceding the Revaluation Date. The decision of a majority of the three (3) arbitrators shall be binding upon Landlord and Tenant and not subject to appeal. Each party shall bear the cost of the arbitrator appointed by it directly and the cost of the third arbitrator shall be paid one-half by Landlord and one-half by Tenant. Each party shall be responsible for its own attorneys' and experts fees in the arbitration process. Section 20 shall not be applicable to the determination of Revaluation Fair Market Value under this Section 6.3.

- (c) Any increase in the Base Rent under this Section 6.3 shall be retroactive to the applicable Revaluation Date even if the final determination of the amount of the increase is made after that Revaluation Date. In this case,

the accumulated increase shall be paid by Tenant to Landlord within twenty (20) business days after the date of the final determination.

- 6.4. **Redevelopment Revaluation.** If Tenant redevelops the New Improvements (excluding repairs and reconstruction following damage to or destruction of the Improvements, restoration to a smaller square footage following a Condemnation, tenant improvements and other interior improvements that do not increase the footprint, height or number of useable square feet in the New Improvements) or performs a material addition that increases the number of useable square feet in the New Improvements, then effective on January 1<sup>st</sup> of the first Lease Year after issuance of a permanent certificate of occupancy related to such redevelopment, the annual Base Rent shall be increased to the greater of (a) the CPI Adjustment amount, or (b) five percent (5%) of the Revaluation Fair Market Value, as determined pursuant to the procedures specified in Section 6.3. Thereafter, the new annual Base Rent determined pursuant to this Section will be subject to the adjustments specified in Section 6.2 and 6.3.
- 6.5. **Payment of Base Rent.** All Base Rent is due in monthly installments in advance on the first day of each calendar month. If the Lease Term commences or ends on a day other than the first day of a calendar month, then the Base Rent payable hereunder by Tenant for such month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month. Tenant shall pay such prorated amount on the first day of the Lease Term or of such period as the case may be. All Base Rent and other Rent required to be paid by Tenant to Landlord under this Lease shall be paid in lawful money of the United States of America at Landlord's address designated in Section 23.4 or by direct deposit to a bank account designated by Landlord. Rent shall be considered to have been paid by Tenant and received by Landlord when deposited by Tenant in any deposit account designated by Landlord or if Landlord has not designated a deposit account, when such payment is physically received at Landlord's address for the payment of Rent.
- 6.6. **Additional Rent.** All amounts which Tenant is required to pay to Landlord pursuant to this Lease (other than Base Rent), shall constitute additional rent ("***Additional Rent***") whether or not the same be designated as Additional Rent in this Lease including without limitation:
- (a) all license and excise fees, business and occupation taxes and all other taxes covering all businesses conducted on the Property and which are not paid by tenants of the Property;
  - (b) all taxes on Tenant's personal property and intangibles on or used in connection with the Property;
  - (c) all insurance premiums;

- (d) all real property taxes or payments in lieu thereof due with respect to the Property, any portion of the Property and any improvements placed on the Property by Tenant;
- (e) all assessments for public improvements, special assessments and any other assessments on the Property and any improvements on the Property during the Term, to the extent of the annual installments are due and payable during the Lease Term, provided that neither party shall consent, without the other party's prior written approval, to any local improvement assessments when any portion thereof is payable during the Term, including any Renewal Term;
- (f) all charges for public and private utility services to or for the Property during the Lease Term, including but not limited to all water, gas, heat, electricity, light, telephone service, power, garbage and sewer services;
- (g) all costs and expenses to operate and maintain the Improvements; and
- (h) all other costs, expenses, rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including interest and penalties), which at any time during or in respect of the Term or Renewal Term may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Property or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Property or any part thereof; provided, however, that Lessor shall not consent (without Lessee's approval) to any of the foregoing if any portion thereof is payable during the Term, including any Renewal Term.

All Additional Rent not paid directly to third-parties by Tenant is due in monthly installments in advance on the first day of each calendar month. Except as otherwise expressly provided herein, Tenant shall perform all of its obligations under this Lease at its sole cost and expense, and shall promptly pay all Additional Rent when due.

- 6.7. **Late Charge and Interest.** If any Rent, or any other monetary sums due Landlord are not paid within five (5) business days of the date it is due, Landlord may collect, and Tenant agrees to pay a "late charge" of five percent (5%) of the past due amount. In addition to the late charge, the Landlord shall charge and the Tenant shall pay interest on all amounts past due at the rate of 12% per annum accruing from the due date of such payment until paid.
- 6.8. **Payment Without Offset or Abatement.** All Rent and any other monetary sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement (except as provided in Section 16.5), and the obligations and liabilities of Tenant hereunder shall in no way be

released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any Condemnation of the Property or any part thereof (except as provided in Section 16.5); (b) any restriction of or prevention of or interference with any use of the Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; (e) any claim which Tenant has or might have or assert against Landlord; (f) any failure on the part of Landlord to perform or comply with any of the terms of this Lease or of any other agreement with Tenant; or (g) any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial Rent during the continuance of any such breach, shall constitute a waiver for any such breach or of any such term. No waiver of any breach shall affect or alter this Lease or the respective rights of Landlord and Tenant with respect to any other then-existing or subsequent breach. Payment by Tenant or receipt by Landlord of a lesser amount than the stipulated rent or other sums due shall operate only as a payment on account of said rent or other sums. No endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is independently approved in writing by Landlord. Landlord may accept such check, remittance or payment without prejudice to its right to recover the balance of said rent or other sums due by Tenant and pursue any other remedy allowable by law or under this Lease.

6.9. **Absolute Net Lease; Proof of Payment; Landlord Right to Pay; Change in Tax Law.**

- (a) Absolute Net Lease: This Lease is intended to be and shall be construed as an absolutely net lease pursuant to which Landlord shall not under any circumstances or conditions, whether presently existing or hereafter arising, or whether beyond the present contemplation of the parties, be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability with respect to the Property, and Tenant shall make any and all payments required hereunder, subject to Section 7.1(m).
- (b) Proof of Payment: Tenant shall furnish to Landlord not later than ten (10) days before the date any tax or assessment would become delinquent, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord that evidences the payment of such tax or assessment. Tenant shall pay any penalties, interest or other charges incurred by reason of any late payment unless the late payment is caused by Landlord's failure to remit funds to third persons which funds have

been paid to Landlord by Tenant in which event Landlord shall be responsible for such items.

- (c) Landlord Right to Pay: If Tenant fails to pay any tax, assessment, levy or other governmental charge when due, Landlord may pay such sum directly and any sum so paid shall become Additional Rent due and payable by Tenant on the next day after any such payment. If Tenant fails to pay any sums on a timely basis twice in any twelve (12) month period, after giving thirty (30) days' notice to Tenant (unless giving such notice would jeopardize Landlord's right under this Section), Landlord may require Tenant to pay to Landlord any taxes, assessments, levies and other governmental charges upon the Property that are payable by Tenant under this Lease. If Landlord exercises this right, Landlord shall pay all such sums to the applicable agency promptly following receipt of the payment from Tenant and shall provide proof of such payment to Tenant. If Landlord does not provide proof of such payment, then Tenant shall have no further obligation to make payments to Landlord and shall make such payments directly.
  
- (d) Change in Tax Law: If after the date hereof any law is passed that changes the laws now in force for the taxation of rental income for federal, state or local purposes, or the manner of the collection of such taxes, so as to adversely affect Landlord's interest, to the extent allowed by law, tenant shall bear and pay as additional rent the full amount of such taxes as they become due and payable by Landlord, provided that Tenant shall not be obligated to pay any of Landlord's federal, state or local income, gift or inheritance tax except to the extent, if any, such tax is designed to be a substitute in whole or in part for any tax otherwise payable by tenant under this Lease. Tenant shall not be required to pay any transfer, excise or other tax as a result of any transfer of Landlord's interest in the Property or any interest in Landlord.

7. **New Improvements.**

7.1. **Construction of New Improvements.**

- (a) Approval of Permits for New Improvements. Tenant shall secure all permits and approvals needed to construct the New Improvements. Tenant shall use commercially reasonable efforts to secure the permits specified below by the target dates set forth below, subject to delay for Force Majeure and, if applicable, the Overhang Redesign. Failure to secure permits by the target dates shall not constitute a default or an Event of Default.

<u>Type of Permit</u>	<u>Target Date</u>
-----------------------	--------------------

Shoring and Excavation Permit	March 18, 2020
Commence Construction	May 31, 2020
Podium Building Permit	June 9, 2020
Office Core and Shell Permit	September 2, 2020
Multi Family Building Permit	September 2, 2020
Tenant Improvement Permit	April 29, 2021

Tenant acknowledges that execution of this Lease by Landlord does not constitute approval by Landlord of any required or additional permits, applications, or other required approvals, if any, and in no way limits or expands the discretion of Landlord in the permit approval process.

- (b) Conceptual Design Plans. Prior to the Commencement Date, Landlord approved the conceptual design plans for the New Improvements as attached to that certain notice of approval from Landlord to Tenant dated as of \_\_\_\_\_, 2019 (the “Conceptual Design Plan”).
- (c) New Improvements to Conform to Design Renderings. Unless modified by operation of Section 7.1(d) below or by requirements imposed as part of the City’s design review process, the New Improvements shall be designed and constructed substantially in accordance with the approved conceptual design plans. The New Improvements shall be constructed in a good and workmanlike manner, free and clear of all Liens in accordance with Section 8.3 below and in conformance with the terms and conditions of the land use permits and approvals and building permits granted by Landlord.
- (d) Change in Design or Construction of New Improvements.
  - A. Before the Commencement Date, Landlord prepared and presented to the Vancouver City Council an amendment to Section 20.630.020 “Building Lines” of the Vancouver Municipal Code to allow new developments including without limitation the New Improvements to overhang the public right-of-way at a height of not less than twelve feet up to a maximum height of 85 feet and with a maximum overhang of not more than five (5) feet (the “Code Amendment”). Tenant agrees that this provision shall not be construed as a binding obligation on the Vancouver City Council or Landlord to enact the Code Amendment and that City Council retains the sole and absolute discretion to approve the Code Amendment in accordance with their approval criteria.  
[Update with status as of Commencement Date]

- B. In the event the Vancouver City Council does not approve the Code Amendment, Landlord acknowledges that Tenant will be required to redesign the New Improvements to eliminate overhangs on the public sidewalks ("**Overhang Redesign**"). The Overhang Redesign will result in reductions to the size of, the number of residential units in and number of square feet of residential and retail space within the New Improvements. Tenant shall submit the Overhang Redesign to Landlord for its prior review and approval (which shall be separate from Landlord's permit review and approval process), which approval shall not be unreasonably conditioned, withheld or delayed. Landlord and Tenant shall work in good faith to agree upon the Overhang Redesign.
- C. The approval of changes in the plans by Landlord pursuant to this Section shall be in addition to any approvals required to be obtained from Landlord pursuant to building permit requirements. Approval of changes in the plans by Landlord shall not constitute approval by Landlord and shall in no way limit or expand Landlord's discretion in the design review process or permit approval process.
- D. If Tenant seeks to substantially renovate the New Improvements or redevelop the Premises during the Lease Term (excluding repairs and reconstruction following damage to or destruction of the Improvements, restoration to a smaller square footage following a Condemnation, tenant improvements and other interior improvements that do not increase the footprint, height or number of useable square feet in the New Improvements), Tenant shall submit plans and specifications for renovation, construction or demolition of improvements to Landlord for approval, which shall not be unreasonably withheld. Within ten (10) days of receipt, Landlord shall object to or approve such plans and specifications and shall submit such comments and/or suggestions as Landlord deems appropriate relating to Landlord's interest. Any plans or specifications providing for or granting any easement, right of way or purported dedication shall be specifically and prominently noted in the drawings and specifications and specifically noted in Tenant's written request for Landlord Landlord's review and approval. If Landlord does not submit its comments within the stated period, Landlord shall be deemed to have waived its right to approve or object to the plans and specifications except to the extent of any easement, right of way or purported dedication of Landlord Landlord's fee interest. If Landlord objects to the plans and specifications or submits any comments or suggestions, Tenant shall make a good faith effort to resolve Landlord's comments to Landlord's satisfaction but Tenant shall have the right to proceed with its plans in compliance with applicable law.



Tenant shall not materially amend the plans and specifications without submitting such amendments to Landlord for comment as above provided except that Landlord's review period shall be shortened to three (3) business days. Landlord shall have no right to review or approve any plans for interior improvements.

- (e) Property Tax Exemption. Tenant applied for participation in the Multi-Family Housing Tax Exemption ("**MTFE**") Program, which is authorized under RCW 84.14 and codified in Chapter 3.22 of the Vancouver Municipal Code. Subject to Tenant submitting a complete application and information as required and in compliance with the VMC Chapter 3.22, Landlord will consider, in accordance with and subject to the applicable review and approval criteria and conditions, conditional approval of the eight (8) year property tax exemption under the MTFE Program, which requires that 20% of the residential units in the New Improvements have rents set at levels affordable to tenants who earn no more than 100% of the area's median income. Nothing herein shall be deemed an approval of, or an obligation to approve, such tax exemption or a modification of its terms or requirements.
  
- (f) Commencement of Construction New Improvements.
  - A. Tenant shall commence construction of the New Improvements no later than May 31, 2020, subject to extension for Force Majeure or an Overhang Redesign. Construction will be deemed to have been commenced when Tenant performs actual and continued, substantial and material work under the Shoring and Excavation Permit with the actual good-faith intent of continued construction and completion of the New Improvements pursuant to the terms and conditions of this Lease. Tenant's failure to commence construction by such date shall constitute an Event of Default.
  
  - B. Prior to the commencement of construction, Tenant shall give at least sixty (60) days' written notice to the Vancouver Downtown Association ("**VDA**") to remove improvements installed by VDA on the Land. If VDA does not remove the improvements before the commencement of construction, Tenant shall remove and deliver such improvements in good condition to the VDA at Tenant's sole cost and expense.
  
- (g) Completion of the New Improvements. Tenant shall use commercially reasonable efforts to diligently prosecute to completion the construction of the New Improvements no later than thirty (30) complete calendar months after the issuance of the Shoring and Excavation Permit, subject to extension for Force Majeure or an Overhang Redesign. Tenant's failure to achieve Completion of Construction by that date shall constitute an Event of Default. "Completion of Construction" shall mean that: (a) Tenant's

architect has issued a certificate of substantial completion on AIA Form G704 or equivalent; and (b) the City of Vancouver has issued a certificate of occupancy for the New Improvements (but excluding any certificate of occupancy required for tenant improvements to office or retail spaces).

- (h) Progress Report. Until Completion of Construction, Tenant shall provide Landlord with monthly progress reports, or more frequent updates if Landlord reasonably requires, regarding the status of the construction of the New Improvements.
- (i) Construction Responsibilities.
  - A. It shall be the responsibility of Tenant to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Lease.
  - B. Tenant shall be solely responsible for all aspects of Tenant's conduct in connection with the New Improvements, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and managers. Any review or inspection undertaken by Landlord with reference to the New Improvements is solely for determining whether Tenant is properly discharging its obligations to Landlord and should not be relied upon by Tenant or by any third parties as a warranty or representation by Landlord as to the quality of the design or construction of the New Improvements.
- (j) Certificate of Completion. Promptly after completion of all the New Improvements on the Property in accordance with those provisions of this Lease relating solely to the obligations of Tenant to construct the New Improvements, Landlord shall provide an instrument so certifying the completion of the New Improvements on the Property (the "***Certificate of Completion***"). The Certificate of Completion shall be conclusive determination that the covenants in this Lease with respect to the obligations of Tenant to construct the New Improvements on the Property have been fully satisfied and are no longer operable. The issuance of such Certificate of Completion shall be in addition to any approvals required to be obtained from Landlord pursuant to building permit requirements concerning temporary or permanent occupancy of the New Improvements and such issuance shall not constitute approval by Landlord regarding occupancy or any way limit Landlord's discretion in approving the New Improvements for temporary or permanent occupancy.
- (k) Entry by Landlord. Tenant shall permit Landlord, through its officers, agents, or employees, at all reasonable times to enter into the Premises

after reasonable advanced written notice and acceptance by Tenant and subject to compliance with construction site work safety rule: (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Lease; and (b) following completion of construction, to inspect the ongoing operation and management of the New Improvements to determine that the same is in conformance with the requirements of this Lease. Tenant acknowledges that Landlord is under no obligation to supervise, inspect, or inform Tenant of the progress of construction, or operations and Tenant shall not rely upon Landlord therefore. Any inspection by Landlord during the construction is entirely for its purposes in determining whether Tenant is in compliance with this Lease and is not for the purpose of determining or informing Tenant of the quality or suitability of construction. Tenant shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers. If, at any time prior to the issuance of a certificate of occupancy and the issuance of the Certificate of Completion by Landlord, Landlord shall determine in its reasonable discretion that such construction is not being made substantially in accordance with this Lease including without limitation the Conceptual Design Plans or the required completion schedule in this Lease, Landlord may give notice to Tenant specifying in detail the particular deficiency, omission or other respect in which Landlord claims construction does not accord with the Lease. Upon receipt of such notice, Tenant shall take all steps reasonably necessary to cause corrections to be made as to such deficiency or omission or to obtain Landlord's consent to any change.

- (l) Corporate Headquarters. Tenant covenants and agrees that it shall cause an affiliate of Holland Partner Group, LLC to lease (or acquire by purchase) no less than two (2) full floors, containing approximately 40,000 square feet (subject to reduction if the Overhang Redesign is required) of the office component of the New Improvements for a base lease term of no less than ten (10) years and covenants and agrees that it shall cause Holland Partner Group to relocate its corporate headquarters to such premises after Completion of Construction. Breach of this covenant shall be a material default.
- (m) Drive-Thru. Landlord shall terminate, the permit for the bank drive-thru teller located in the West 9th Street right-of-way between Columbia and Washington Streets no later than thirty (30) days prior to estimated commencement of construction.

7.2. Indemnity. Tenant shall defend, indemnify, protect and hold Landlord harmless from any claims, liabilities, damages, losses, or expenses arising by virtue of or relating to Construction engaged in, by or for Tenant on the Land. Tenant shall timely and regularly pay any and all amounts properly payable to third parties

with respect to such Construction and will maintain its books and records with respect to all aspects of such work and material therefor, and will make them available for inspection by Landlord upon request. Except as agreed to by Tenant, as required by law or as reasonably necessary in connection with the good faith prosecution of Landlord's ordinary business (including disclosure to its tax and legal advisors), Landlord shall keep confidential and not disclose to third parties any information or documents provided to Landlord under this Section.

7.3. **Liens.** Tenant expressly covenants and agrees that no liens of mechanics, materialmen, laborers, surveyors, engineers, architects, artisans, contractors, subcontractors, suppliers or any other lien of any kind whatsoever (together "***Liens***") shall be created against or imposed upon the Land or the New Improvements, and that in the event any such Liens shall be asserted or filed by any persons, firms or corporations performing labor or services or furnishing material or supplies in connection with Tenant's Construction, Tenant shall pay off in full or cause the same to be discharged of record within thirty (30) days of notification thereof. Tenant reserves the right to contest the validity or amount of any such Lien in good faith provided that, within thirty (30) days after the filing of such Lien, Tenant discharges said Lien of record or records a bond which complies with the requirements of RCW 60.04.161 eliminating said Lien as an encumbrance against the Land or the Improvements. In the event Tenant shall fail to so remove any such Lien, Landlord may take such action as Landlord shall reasonably determine to remove such Lien and all costs and expenses incurred by Landlord including, without limitation, amounts paid in good faith settlement of such Lien and attorneys' fees and costs, together with interest thereon, shall be paid by Tenant as Additional Rent. Tenant's obligations pursuant to this Section shall survive the expiration or earlier termination of this Lease. Nothing contained in this Lease shall be deemed to constitute Tenant as Landlord's agent, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment for any construction, alteration, addition, repair or demolition of, to or on the Land (or any part thereof). NOTICE IS HEREBY GIVEN THAT LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO TENANT, OR ANYONE HOLDING AN INTEREST IN THE LAND OR THE IMPROVEMENTS (OR ANY PART THEREOF) THROUGH OR UNDER TENANT, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES, MATERIALS OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE LAND OR THE IMPROVEMENTS.

7.4. **Fixtures and Equipment.** In constructing the New Improvements, Tenant and Space Tenants may place or install in the New Improvements such trade fixtures and equipment as Tenant or Space Tenants shall deem desirable for the conduct of business therein. Personal property, trade fixtures and equipment used in the conduct of business by Tenant and Space Tenants (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the New Improvements) placed by Tenant or Space Tenants on or in the New

Improvements, including factory equipment, telephone, telecommunications and facsimile transmission equipment and lines, point of sale equipment, televisions, radios, computer systems, and the then-equivalents of any of the foregoing, shall not become part of the real property, even if nailed, screwed or otherwise fastened to the improvements or buildings, but shall retain their status as personal property. Such personal property may be removed by Tenant or Space Tenants at any time so long as any damage to the property of Landlord occasioned by such removal is thereupon repaired. All other fixtures, equipment and Improvements (including but not limited to the New Improvements and all fixtures and equipment necessary for its operation and maintenance) constructed or installed upon the Land shall be deemed to become part of the real property and, upon termination or expiration of this Lease, shall become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant or Space Tenants do not remove their personal property and trade fixtures which they are permitted by this Section 7.4 to remove within forty-five (45) days following the termination or expiration of this Lease, Landlord may at its election (i) require Tenant to remove such property at Tenant's sole expense, and Tenant shall be liable for any damage to the Land and the Improvements caused by such removal, (ii) treat said personal property and trade fixtures as abandoned, retaining said properties as part of the Land and the Improvements, or (iii) have the personal property and trade fixtures removed and stored at Tenant's expense, or otherwise dispose of such property after twenty (20) days prior written notice to Tenant with an opportunity to redeem them by payment of the costs of storage, removal and repair and related costs and fees incurred. Tenant shall promptly reimburse Landlord for any damage caused to the Land and the Improvements by the removal of personal property and trade fixtures, whether removal is by Tenant or Landlord.

7.5. **Contractor Insurance.** At Tenant's sole cost, Tenant shall maintain or cause any contractor of Tenant performing Construction on the Land to maintain insurance as follows and shall provide Landlord with satisfactory proof of such coverage prior to commencement of any Construction:

- (a) Commercial General Liability Insurance on an occurrence basis including, but not limited to, Contractual Liability, Owner's and Contractor's Protective, and Products/Completed Operations Liability in the following minimum limits of liability: Bodily Injury and Property Damage: \$1,000,000/each occurrence; \$2,000,000/aggregate. (Products/Completed Operations Liability Insurance is to be provided for a period of at least three (3) years after completion of work.) Such coverage shall include protection for Explosion, Collapse and Underground Damage.
- (b) Statutory workers' compensation or similar insurance required by law.

Tenant's contractor's insurance shall be primary and not contributory to that carried by Tenant, Landlord, their agents or mortgagees. Tenant and Landlord, and if any, Landlord's building manager or agent or mortgagee shall be named as

additional insured on Tenant's contractor's insurance policies on Form CG2010 11/85 (ISO) or equivalent. The company or companies writing any insurance which Tenant's contractor is required to maintain under this Lease, as well as the form of such insurance, shall at all times be subject to Landlord's reasonable approval, and any such company shall be licensed to do business in the state of Washington. Such insurance companies shall have an A.M. Best rating of A-VII or better.

- 7.6. **Permits; Compliance with Laws.** All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the New Improvements and any subsequent improvements, repairs, replacements or renewals to the Improvements shall be acquired as required by applicable Laws including but not limited to, building codes and the ADA (Americans with Disabilities Act), by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Land and the New Improvements during the Term to be performed in accordance with all applicable Laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Tenant is responsible, at Tenant's sole cost and expense, to cause the Land and the Improvements to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Land and the Improvements during the Lease Term, whether now in effect, or hereafter adopted or enacted.
- 7.7. **Landlord's Cooperation.** Landlord will fully cooperate with Tenant incident to and not oppose Tenant's obtaining of permits for the New Improvements on the Land and will, without cost to Landlord or charge to Tenant, execute and deliver to Tenant, within ten (10) days of request, any permit application or other document prepared by Tenant and reasonably requested by Tenant conditioned upon such permit application, alley vacation or other document prepared by Tenant does not purport to or in any way seek to alter, diminish or otherwise obviate Landlord's ordinances, rules, regulations and independent permitting and enforcement authority. Landlord's cooperation shall not be deemed to include, require or otherwise condition Landlord's independent review, permitting and enforcement authority.
- 7.8. **Guaranty.** Contemporaneously with the execution of this Lease, Tenant has delivered to Landlord the Guaranty of Completion and Performance for the New Improvements in the form attached as Exhibit B, duly executed by Holland Partner Group Investments, LLC (the "***Guaranty***").
- 7.9. **Deposit.** Contemporaneously with the execution of this Lease, Tenant has delivered to Landlord a deposit in the amount of \$250,000 (the "***Deposit***"). No part of the Deposit shall be considered to be held in trust or to be prepayment for any monies to be paid by Tenant. The Deposit shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the entire

Term hereof. If an Event of Default occurs, including but not limited to the provisions relating to the payment of any rent or other charges or sums due under this Lease, Landlord may (but shall not be required to) use, apply, or retain all or any part of the Deposit for the payment of any such rent or other charges or sums due under this Lease, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss, damage, cost or expense (including attorney's fees) which Landlord may suffer or incur by reason of Tenant's default. Landlord shall not be required to keep the Deposit separate from its general funds and Tenant shall not be entitled to interest on such Deposit. Except in the case where the Event of Default was occasioned by a Debt and Equity Default, if any portion of said Deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit a certified or cashier's check with Landlord in an amount sufficient to restore the Deposit to its original amount and Tenant's failure to do so shall be a default under this Lease. For clarity, this restoration obligation shall not apply if the Event of Default is occasioned by a Debt and Equity Default, but the restoration obligation shall be automatically reinstated if a Debt and Equity Cure is effected. Within sixty (60) days after Tenant demonstrates to Landlord's reasonable satisfaction that Tenant has paid \$5,000,000 in hard costs for the construction of the New Improvements, Landlord shall refund the Deposit to Tenant.

8. **Ownership and Removal of Improvements.** The New Improvements and all other Improvements, alterations and additions constructed by Tenant on, over or under the Land shall be and remain the property of Tenant until the expiration or earlier termination of this Lease. At the expiration or earlier termination of this Lease, the New Improvements and all other Improvements, additions and alterations thereto which are on, over or under the Land shall become the property of Landlord.

9. **Utilities.** Tenant shall arrange and pay for heat, light, water, gas and sewer and for all other public utilities which shall be used in or charged against the Premises during the full Lease Term. Landlord shall not be liable for the failure of any such services for any reason whatsoever. Tenant shall indemnify, defend and hold Landlord harmless against and from any loss, liability, claim or expense resulting from any failure of Tenant to pay all such charges when due.

10. **Taxes and Assessments.**

10.1. **Real Property Taxes and Assessments.** Tenant agrees to bear, pay and discharge before delinquency thereof, as Additional Rent, all taxes and assessments, general and special, which may be taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Property or any part thereof, including any new taxes and assessments not of the kind enumerated above to the extent that the same are made, levied or assessed in lieu of any taxes or assessments now customarily levied against real estate or personal property. Taxes and assessments for the year in which the Lease Term commences shall be prorated between Landlord and Tenant as of the Commencement Date. Taxes and

assessments for the year in which this Lease expires or terminates shall be prorated between Landlord and Tenant as of such date of expiration or termination. Tenant shall have the right, in its or Landlord's name, to contest the validity of any tax or assessment which Tenant is required to bear, pay and discharge hereunder, by appropriate legal proceeding, provided that Tenant, before instituting any such contest, pays such taxes or assessments in full.

- 10.2. **Personal Property Taxes.** Tenant shall pay prior to delinquency all personal property taxes assessed against and levied upon Tenant's furnishings, equipment and all other of Tenant's personal property. If possible, Tenant shall cause Tenant's furnishings, equipment and all other of Tenant's personal property to be assessed and billed separately from the Property.
- 10.3. **Other Taxes.** If any governmental authority or unit under any present or future law effective at any time during the term of this Lease shall in any manner levy a tax on Rent payable under this Lease, or a tax in any form against and/or because of or measured by gross income derived from the leasing or rental of the Premises, the amount of the next succeeding month's Base Rent following payment of such tax by Landlord shall be increased by an amount equal to such tax paid by Landlord. Should Tenant fail to pay the Base Rent thus revised, Landlord shall have the same remedies as upon failure to pay Rent. Notwithstanding the foregoing, Tenant shall not be liable to pay any amount because of income tax of a general applicability or any net income, profits, excess profits, succession, estate, capital, transfer or inheritance tax of any kind or nature whatsoever.
- 10.4. **New Assessment District Decisions.** If any proposal is made to include the Land in any local improvement district ("**LID**") (or to modify the terms of any LID, including the amount or calculation of any required payments) and the owner of the Land is entitled to vote in favor of or against such proposal, then, provided there is then no uncured Event of Default, Tenant shall decide how to vote, the parties shall cooperate to effectuate such decision, and Tenant shall have full power to represent the Land in all matters related to the LID. At any time during the last ten (10) years of the Lease Term any such LID shall require the approval of Landlord which, provided there is then no uncured Event of Default, shall not be unreasonably withheld.

## 11. **Maintenance and Repair.**

- 11.1. **Landlord's Repairs.** Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property or any part thereof, during the Lease Term or any extension thereof.
- 11.2. **Tenant's Repairs.** Tenant at its sole cost and expense shall maintain the Property including all Improvements and all appurtenances thereto and every part thereof in good order, condition and repair and will take all action and will perform all interior and exterior, structural and non-structural, foreseen and unforeseen,



ordinary and extraordinary, maintenance and repairs required to keep the Property in good repair and condition. Landlord shall not be required to maintain, repair or rebuild all or any part of any Improvements. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Property in good order, condition and repair. Landlord, at its option, may make periodic inspections of the Property upon reasonable prior notice to Tenant for the purpose of determining Tenant's satisfaction of its obligations under this Section, and Tenant agrees to promptly perform all maintenance and repairs reasonably required by Landlord as the results of such inspection to maintain the Property in good order, condition and repair and in the condition required under this Lease.

- 11.3. **Rights of Landlord.** If Tenant fails to maintain the Property in good order, condition and repair, Landlord may give Tenant notice to do such acts as are reasonably required to so maintain them. If Tenant fails to commence such work within a reasonable period of time and complete the same within such period of time as is reasonable under the circumstances, not to exceed one hundred twenty (120) days, subject to reasonable extension for Force Majeure events, then in addition to any other rights and remedies Landlord may exercise hereunder, Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand as Additional Rent with interest at twelve percent (12%) per annum from the date of such work until paid. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Property by Tenant as a result of performing any such work. Nothing in this Lease shall imply any duty or obligation upon the part of Landlord to do any such work or to make any such alterations and repairs and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same.
- 11.4. **Condition at End of Lease.** Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Property with the Improvements in the condition they are required to be maintained by Tenant hereunder, ordinary wear and tear and damage by fire, earthquake, act of God or the elements excepted.
12. **Modifications, Additions and Replacements.** After the New Improvements have been completed, Tenant may thereafter, without the requirement of any consent of Landlord, except as set forth in Section 7.1 above, make modifications, alterations, additions or improvements to the Improvements, including, without limitation, construction of tenant improvements, provided the same do not materially decrease the value of the Improvements in whole or in part or impair the structural integrity of the Improvements. The modifications, alterations, additions or improvements permitted under the preceding sentence without Landlord's consent, except as set forth in Section 7.1, are referred to in this Lease as the ***"Permitted Modifications"***. Any Permitted Modifications shall not materially decrease the value of the Property, shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable Laws and the

requirements of all insurance policies applicable to the Property. Tenant shall pay, when due, all claims for labor, materials, supplies or equipment furnished to or for Tenant at or for use in the Property. Other than Construction of the New Improvements in accordance with the provisions of this Lease and other than Permitted Modifications, Tenant shall not make any other material modifications, alterations, additions or improvements to the Property or any part thereof, including without limitation, construction of Improvements which replace the then existing Improvements (collectively, “*Replacement Improvements*”), without first complying with Section 7.1 of his Lease.

13. **Indemnification and Waiver of Subrogation.**

13.1. **Indemnification by Tenant.** Tenant shall absolutely and unconditionally protect, defend, indemnify and hold Landlord harmless from and against any and all claims, debts, demands, obligations, losses, Liens, damages, judgments or liabilities now or hereafter arising from or relating to: (i) Tenant’s use of the Property; (ii) the design, development, construction, operation, maintenance, repair or management of the Improvements, or (iii) the conduct of business or from any activity, work or thing done, permitted or suffered by Tenant or any other person in, under or about the Property, and shall further protect, defend, indemnify and hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant’s part to be performed under the terms of this Lease, or arising from any act, omission or negligence of Tenant, or any of its agents, contractors and employees or any other person and from and against any and all costs, attorneys’ fees, expenses, penalties, interest and other liabilities incurred in connection with such claim or any action or proceeding brought against Landlord by reason of any such claim. Tenant hereby assumes all risk of damage to property or injury to persons, in, under or about the Property from any cause. If Tenant is required to defend any action or proceeding pursuant to this Section 13.1 to which action or proceeding Landlord is made a party, Landlord shall also be entitled to appear, defend or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent Landlord is indemnified under this Section 13.1, Tenant shall bear the cost of Landlord’s defense, including reasonable attorneys’ fees. It is intended that the foregoing indemnity shall be broad and comprehensive. This indemnity shall survive the expiration or other termination of this Lease. LANDLORD AND TENANT HEREBY WAIVE THEIR IMMUNITY WITH RESPECT TO THE OTHER UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND/OR THE LONGSHOREMEN’S AND HARBOR WORKER ACT, AND/OR ANY EQUIVALENT ACTS. THIS WAIVER HAS BEEN SPECIFICALLY NEGOTIATED BY THE PARTIES TO THIS LEASE AND THE PARTIES HAVE HAD THE OPPORTUNITY TO, AND HAVE BEEN ENCOURAGED TO, CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

13.2. **Waiver of Subrogation.** Whether the loss or damage is due to the negligence of either Landlord or Tenant, their agents or employees, or any other cause,

Landlord and Tenant do each herewith and hereby release and relieve the other and any other tenant, its agents or employees, from responsibility for, and waive their entire claim of recovery for any loss resulting from business interruption at the Premises or loss of income from the Improvements or any loss or damage to the real or personal property of either located anywhere on or under the Premises arising out of or incident to the occurrence of any of the perils which are covered by any all-risk direct physical damage insurance policy now or from time to time carried by the parties hereto or any of the perils covered by the physical damage insurance policy required hereunder. Each party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other party. Notwithstanding the foregoing, no such release by Landlord or Tenant shall be effective unless such waivers are obtainable by each party.

14. **Insurance.** Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Lease Term, the insurance described in this Section (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of Washington reasonably satisfactory to Landlord, reasonably covering and protecting Tenant and Landlord. **[Subject to review by Holland's insurance consultant]**

- 14.1. **Required Coverage.** (i) Property insurance with respect to all insurable property and rental income, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in Special Form (also known as "*all-risk*") coverage in an amount not less than one hundred percent (100%) of the full replacement cost of the Improvements, plus the cost of debris removal and sufficient to prevent Tenant from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non-reporting) form during and with respect to any Construction; (ii) if and to the extent any portion of the Land is, under the Flood Disaster Protection Act of 1973 ("*FDPA*"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; (iii) general liability insurance, on an "occurrence" basis against claims for bodily injury, death or property damage liability, for the benefit of Tenant as named insured and Landlord and its lenders as additional insured(s), with limits of no less than \$5,000,000 per occurrence and in the annual aggregate (increased on January 1 of the tenth (10<sup>th</sup>) Lease Year and each ten year anniversary thereafter by the percentage increase in the Index; and (vi) such other available insurance on the Property as may from time to time be reasonably required by Landlord or its lenders against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements, provided the same is available on commercially reasonable terms. Any dispute between Landlord and Tenant under this Section 14.1 will be resolved by arbitration pursuant to Section 20 of this Lease.

14.2. **Insurance Policy Requirements.** All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions and in forms reasonably acceptable to Landlord. Tenant will obtain insurance policies that require at least ten (10) days' prior written notice to Landlord of any cancellation for nonpayment of premiums and at least thirty (30) days' prior written notice to Landlord of any other cancellation or any change of coverage. All insurance companies must be licensed to do business in the state of Washington and must have A. M. Best Company financial and performance ratings of A-VIII or better (or the substantial equivalent if no longer published). All insurance policies maintained, or caused to be maintained, by Tenant with respect to the Property shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Landlord and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. All such policies shall contain a provision that Landlord, although named as an additional insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents, and employees by reason of the negligence of Tenant. All such insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons or injury or damage to property contained in Section 13.1 of this Lease. If any insurer which has issued a policy of hazard, liability or other insurance required pursuant to this Lease becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any bankruptcy or insolvency statute, or if in Landlord's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Tenant shall, upon its discovery thereof or upon request by Landlord therefor, promptly obtain and deliver to Landlord, at Tenant's expense in each instance, a like policy (or, if and to the extent permitted by Landlord, acceptable evidence of insurance) issued by another insurer, which insurer and policy satisfy the requirements of this Lease. Evidence of insurance as may be acceptable to Landlord shall be delivered to Landlord at the Commencement Date, and a copy of each insurance policy shall be delivered to Landlord as soon as practicable, but no later than ninety (90) days after the Commencement Date of this Lease, with all premiums fully paid current, and evidence of each renewal or substitute policy (or evidence of insurance) shall be delivered to Landlord, with all premiums fully paid current, at least ten (10) days before the termination of the policy it renews or replaces. Tenant shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Landlord evidence satisfactory to Landlord of the timely payment thereof.

14.3. **Landlord's Acquisition of Insurance.** If Tenant at any time during the Lease Term fails to procure or maintain insurance required under this Section 14, Landlord shall have the right upon five (5) business days prior notice to Tenant, to procure such substitute insurance as Landlord deems appropriate (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord.

14.4. **Application of Insurance Proceeds.** The application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 15 below and, in the event of any repair, replacement, restoration or rebuilding, Tenant shall apply the proceeds of the insurance collected to the cost of such work upon certificate of progress and/or completion by the licensed architect or engineer in charge of the work. Any amounts payable to Tenant or any Affiliate of Tenant for work or services performed or materials provided as part of any such repair, replacement, restoration or rebuilding shall not exceed competitive rates for such services or materials and Tenant shall upon request of Landlord, make available to Landlord and its representatives at Landlord's offices all books and records of Tenant relating to such work, services and materials.

15. **Damage or Destruction.**

15.1. **Damage Prior to Last Five Years.** In the event of any damage to or destruction of the Improvements from any cause whatever prior to the last five (5) years of the Lease Term, Tenant shall promptly give written notice thereof to Landlord. Tenant shall promptly repair or restore the Improvements as nearly as possible to their condition immediately prior to such damage or destruction, or Tenant may elect to replace the damaged or destroyed Improvements with Replacement Improvements. If the Improvements are substantially destroyed or damaged and Tenant reasonably determines that repair and restoration of the damaged or destroyed Improvements is not feasible and Tenant does not elect, in its sole discretion, to build Replacement Improvements, Tenant shall have the right to terminate this Lease exercisable by the delivery of written notice to Landlord by no later than one hundred eighty (180) days after the date of the damage or destruction, and the termination shall be effective on the date notice is delivered by Tenant or such later date as Tenant may designate in such notice. Any dispute between Landlord and Tenant about whether the Improvements are substantially destroyed or damaged or whether restoration or repair of the damaged or destroyed Improvements is feasible shall be determined by arbitration in accordance with Section 20 of this Lease. If Tenant timely and duly elects to terminate this Lease pursuant this Section, then Tenant shall use as much of the available insurance proceeds as is necessary to demolish the Improvements (or those portions Landlord requests to be removed), remove all debris, fill in all excavation to level the site and return the Land to a safe and clean condition. Tenant's duty to repair any damage to or destruction of the Property (or to otherwise comply with the requirements of the preceding sentence in case of termination) shall not be conditioned upon the availability of any insurance proceeds. There shall be no abatement or reduction in Rent during such repair and restoration or demolition or new construction. If this Lease is terminated as provided in this Section, Tenant shall be entitled to receive all of the net insurance proceeds after payment of the costs of demolition and removal of the Improvements and restoration of the Land as provided above.

15.2. **Damage During Last Five Years.** In the event such damage or destruction occurs within the last five (5) years of the Lease Term, and if such damage or

destruction cannot be substantially repaired within six (6) months from the date of such damage or destruction, Tenant may elect to terminate this Lease by written notice delivered to the other within ninety (90) days after the date of such damage or destruction. If Landlord and Tenant cannot agree about the time required for repair, the issue shall be determined by arbitration in accordance with Section 20 of this Lease. If Tenant timely and duly elects to terminate this Lease pursuant to this Section, then Tenant shall use as much of the insurance proceeds as necessary to demolish the Improvements (or those portions Landlord requests to be removed), remove all debris, fill in all excavation to level the site and return the Land to a safe and clean condition. Tenant's duty to comply with the requirements of the preceding sentence in case of termination shall not be conditioned upon the availability of any insurance proceeds. If Tenant does not elect to terminate this Lease, then Tenant shall repair or restore the Improvements as nearly as possible to their condition immediately prior to such damage or destruction or construct thereon such other Improvements as may be approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. If Tenant elects to terminate this Lease, the Lease Term shall end on the earlier of the last day of the then-existing Lease Term or one hundred twenty (120) days after the date of such damage or destruction. Any insurance proceeds from Tenant's insurance payable shall be allocated between Landlord and Tenant pro-rata based upon the unexpired Lease Term then in effect, subject to Landlord's claim against Tenant's share of such proceeds from Tenant's insurance in an amount equal to unpaid Rent due from Tenant hereunder; provided, however, that Tenant's share of such insurance proceeds shall be no less than the amount required to pay off any Leasehold Mortgage in effect and recorded prior to the date of the casualty. If this Lease is not terminated, any net insurance proceeds from Tenant's insurance payable by reason of such damage or destruction shall be made available to Tenant to pay the costs of such reconstruction and any funds remaining shall be paid to Tenant.

16. **Condemnation.**

16.1. **Effect of Taking.** If during the Lease Term there is a Total Condemnation, this Lease and the leasehold estate of Tenant in and to the Premises shall cease by virtue of the Condemnation Proceedings and terminate as of the Date of Condemnation. Termination of this Lease shall not effect Tenant's share of any Condemnation Award under this Section. Neither Landlord nor Tenant shall compromise or settle any Condemnation action without the consent of the other. Landlord, Tenant and any Leasehold Mortgagee shall be entitled to participate in such Condemnation proceedings. Any Condemnation Award which is to be applied to restoration of the Improvements shall be paid to Tenant. The Condemnation Award shall be applied first to the actual out-of-pocket costs incurred by Landlord and Tenant in the Condemnation proceedings and then as provided in Section 16.2 or Section 16.3.

- 16.2. **Allocation of Award for Total Condemnation.** The Condemnation Award for a Total Condemnation, after payment of the costs of the Condemnation proceedings, shall be allocated between Landlord and Tenant as follows:
- (a) Tenant shall receive that portion of the Condemnation Award which is attributable to the taking of the New Improvements or any Replacement Improvements; provided, that in the event Tenant has complied with the provisions of Section 18.1 below relating to limiting the principal balance(s) of the Leasehold Mortgage(s) in the aggregate to no more than eighty percent (80%) of the fair market value of the Improvements as of the date of the funding of the most recent Leasehold Mortgage, then the portion of the Condemnation Award to be received by Tenant shall be equal to the greater of (i) the amount required to pay off the amount then owing on said Leasehold Mortgage(s), or (ii) the amount of the award attributable to the taking of the New Improvements or any Replacement Improvements.
  - (b) The balance of the Condemnation Award shall be paid to Landlord.
  - (c) Any dispute between Landlord and Tenant regarding allocation of the Condemnation Award upon a Total Condemnation shall be resolved by binding arbitration in accordance with Section 20 of this Lease.
- 16.3. **Allocation of Award for Temporary Condemnation.** Any Condemnation Award for a Temporary Condemnation shall be paid to Tenant.
- 16.4. **Allocation of Award for Partial Condemnation.** The Condemnation Award for a Partial Condemnation shall be paid to Tenant and applied first toward restoration of the Improvements, in the same manner as restoration after casualty. Whether or not the Condemnation Award is adequate, Tenant shall, at its expense, restore the Improvements in compliance with this Lease. After Tenant has completed and fully paid for restoration, any remaining Condemnation Award shall be distributed to Landlord and Tenant as if it arose from a Total Condemnation that affected only the portion of the Property taken, with an equitable allocation of all elements taken into account in determining such distribution.
- 16.5. **Abatement of Rent.** There shall be no abatement of Base Rent as a result of any Temporary Taking. If the Condemnation Award for a Partial Taking exceeds \$1,000,000 and if any portion of the Condemnation Award is paid to Landlord, then commencing as of the first day of the calendar month after Landlord has received its portion of the Condemnation Award the Base Rent shall be reduced in the same proportion that the square footage of the portion of the Property so taken bears to the total square footage of the Property.
- 16.6. **Tenant's Personal Claims.** Nothing in the foregoing provisions of this Section 16 shall limit Tenant's right to separately pursue compensation or

damages for lost revenues, business interruption, lost value of plans and permits and moving and relocation expenses, and Tenant shall be solely entitled to any such compensation for damages free and clear of any claim by Landlord, but no such claim may have the effect of reducing the amount of the Condemnation Award.

17. **Assignment and Subletting.**

- 17.1. **Assignment of Lease or Sublease of Entire Premises.** Tenant shall have the right to assign its interest in this Lease or to sublet all (but not part) of the Premises to any other party subject to the prior written approval of Landlord, said approval not to be unreasonably withheld, conditioned or delayed so long as the proposed assignee or subtenant (a) shall have paid a minimum of twenty percent (20%) of the purchase price for the Improvements in cash; (b) has prior experience owning and/or managing real property comparable to the Property; and (c) shall agree in writing to be bound by and assume the terms of this Lease. Any sale, conveyance, assignment or sublease of the entire Property by Tenant shall be evidenced by an instrument in writing, duly executed under seal, acknowledged by Tenant and by the assignee or assignees, and duly recorded in the Office of the Recorder of Clark County, Washington. Such instrument shall provide that the assignee or assignees shall expressly accept and assume all the terms and conditions the Lease requires Tenant to observe and perform from and after the date of the assignment. Tenant agrees that a duplicate copy of said instrument, duly executed, together with the address of the assignee or subtenant, shall be delivered to Landlord within ten (10) days after the date of the delivery thereof to Tenant. The parties agree that any attempted sale, conveyance, assignment or sublease by Tenant of Tenant's entire interest in the Property and in the buildings thereon, without complying with the covenants and conditions of this Section shall be null and void. The term "assignment" and "sublease" as used in this Section shall refer to an absolute assignment or sublease of all right, title and interest of Tenant under this Lease, and shall not include an assignment or other transfer of the New Improvements or Tenant's interest under this Lease pursuant to a Leasehold Mortgagee to secure financing provided to Tenant or any Space Lease. An assignment, sublease, sale, conveyance or other transfer by Tenant of Tenant's entire interest in the Lease and New Improvements that is approved in writing by Landlord in accordance with this Section shall release Tenant of any obligations accruing after the effective date of the assignment. Tenant shall provide Landlord with at least thirty (30) days prior written notice of any proposed assignment of this Lease or sublease of the entire Premises hereunder, including the identity of the proposed assignee or subtenant. Tenant shall provide Landlord with such additional information as Landlord shall reasonably request regarding the proposed assignee or subtenant. If Tenant is a partnership, limited liability company, corporation or other entity, any transfer to a Person who is not an Affiliate of Tenant of Tenant's interest in this Lease by merger, consolidation, redemption or liquidation, or any change(s) in the ownership of, or power to vote, to a Person who is not an Affiliate of Tenant which singularly or collectively represents a majority of the beneficial interest in



Tenant, shall constitute a Transfer under this Section. Landlord will respond in writing within fifteen (15) days of any request for approval of such a transfer with a written (a) approval, (b) detailed request for additional information, or (c) rejection reciting the specific grounds for rejection. Any of the foregoing to the contrary notwithstanding, Tenant shall not assign its interest in this Lease before the receipt of the Certificate of Completion, except to a Tenant investor pursuant to Tenant's organizational documents or a Leasehold Mortgagee for security purposes.

17.2. **Subletting**. Except as provided in Section 17.1 above or if Tenant shall be in default beyond any applicable cure period, Tenant shall have the right to enter into subleases ("**Space Leases**") for space in the Improvements to subtenants ("**Space Tenants**") subject to the following conditions:

- (a) Each Space Lease shall be subordinate to this Lease and contain a commercially reasonable provision requiring the subtenant to attorn to Landlord, or in the event of any proceeding to foreclose any Leasehold Mortgage, to the Leasehold Mortgagee, or any person designated in a notice from the Leasehold Mortgagee, if Tenant defaults under this Lease and if the subtenant is notified of Tenant's default and instructed to make subtenant's rental payments to Landlord or Leasehold Mortgagee or designated person as provided in this Section 17.2.
- (b) Each Space Lease shall require the Space Tenant to take no action in contravention of the terms of this Lease.
- (c) Each Space Lease shall expire no later than the last day of the Lease Term.

17.3. **Non-Disturbance of Residential Space Leases**. With respect to each residential Space Lease, Landlord will agree, and shall use reasonable efforts to obtain its lender's consent thereto, to recognize each residential Space Lease (each a "Residential Lease" and the tenant under a Residential Lease is referred to as a "Residential Tenant") and not disturb the rights of any Residential Tenant thereunder in the event this Lease is terminated because of an Event of Default by Tenant hereunder on the following terms:

- (a) Each Residential Lease will continue in full force and effect until the earlier of (a) the expiration of each Residential Lease but in no event to exceed eighteen (18) months or (b) the expiration of the Term.
- (b) Landlord shall recognize each Residential Tenant's rights under its Residential Lease, so long as such Residential Tenant is not in default under the Residential Lease after receipt of notice and expiration of any applicable cure period provided that if Tenant has delivered a notice of default to the Residential Tenant then Landlord shall not be required to deliver an additional notice of default nor shall the cure period be extended.

- (c) Landlord shall not be responsible to refund all or any part of any security paid by the Residential Tenant under the Residential Lease for any purpose unless and only to the extent Landlord has received such security deposit.
- (d) This Section 17.3 shall be self-operative without any requirement for the residential tenant (or any other party) to execute a subordination and non-disturbance agreement and Tenant shall provide notice of such terms and conditions in its residential leases.

17.4. **Non-Disturbance of Commercial Space Leases.** This Section 17.4 shall apply only to Space Lease of office or retail spaces (each a "Commercial Lease" and the tenant under a Commercial Lease is referred to as a "Commercial Tenant"). This Section 17.4 shall not apply to any Residential Lease. Upon request of Tenant, Landlord will agree, and will use reasonable efforts to obtain its lender's consent thereto, to recognize each Commercial Space Lease and not disturb the rights of the Commercial Tenant thereunder in the event this Lease is terminated because of an Event of Default by Tenant hereunder. Landlord agrees to enter into a Non-Disturbance Agreement with each Commercial Tenant stating that the following provisions will apply in the event this Lease is terminated and Landlord has the right to possession of the Property (subject to any Non-Disturbance Agreement then in effect) free and clear of any interest of Tenant and any person claiming by, through or under Tenant including but not limited to any interest of any Leasehold Mortgagee:

- (a) The Commercial Lease will continue in full force and effect in accordance with its terms, except as provided in this Section and the Commercial Tenant shall attorn to Landlord.
- (b) Landlord shall recognize Commercial Tenant's rights under the Commercial Lease, so long as such Commercial Tenant is not in default under the Commercial Lease after receipt of notice and expiration of any applicable cure period provided that if Tenant has delivered a notice of default to the Commercial Tenant then Landlord shall not be required to deliver an additional notice of default nor shall the cure period be extended.
- (c) The Commercial Tenant's sub-leasehold estate shall not be affected in any action or proceeding instituted under or in connection with any default by Tenant under this Lease.
- (d) Landlord shall assume and agree to perform the obligations of Tenant under such Commercial Lease arising after the date of termination of this Lease and Landlord's obtaining possession of the premises described in the Space Lease; provided, however, Landlord shall not:

- A. Be liable for any act or omission of Tenant prior to the date of Landlord's assumption;
  - B. Subject to any offsets, claims or defenses which Commercial Tenant might have under its lease or otherwise against Tenant prior to the date of assumption;
  - C. Required or obligated to credit Space Tenant with any rent or additional rent beyond the then current rental period under the Commercial Lease assumed by Landlord, except to the extent such rent is paid to Landlord;
  - D. Be obligated to recognize any amendment to the Commercial Lease (excluding amendments that do not reduce the Commercial Tenant's obligations and excluding amendments documenting the exercise of rights granted to the Commercial Tenant in the original Commercial Lease) unless the amendment has been previously approved in writing by Landlord, such approval not be unreasonably withheld; provided, however, that Landlord shall respond within ten (10) days after Landlord has received the request for approval of any such amendment, which request shall specifically refer to the effect if Landlord does not so respond, and in the event Landlord fails to respond within said 10-day period, such amendment shall be deemed approved by Landlord;
  - E. Be bound to perform any construction or tenant improvement work or pay any tenant improvement allowance whether in cash or by rent credit which Tenant has agreed to perform or pay under the Commercial Lease provided however, that if Landlord elects not to perform such work or pay such allowance, and the Commercial Lease specifies an alternate rent schedule if the allowance is not paid or the work is not performed, Landlord shall be bound by the alternate rent schedule in the Commercial Lease;
  - F. Be responsible to refund all or any part of any security paid by Commercial Tenant under the Commercial Lease for any purpose unless and only to the extent Landlord has received such security deposit; or
  - G. Be bound by any covenant of Tenant under the Commercial Lease that gives the Commercial Tenant greater rights than the rights that accrue to Tenant under this Lease (for example any term that extends beyond the Lease Term of this Lease).
- (e) Such Non-Disturbance Agreement shall include a provision to the effect that so long as no Leasehold Mortgagee has required the Space Tenant to pay rents to such Leasehold Mortgagee, in the event Landlord gives

written notice to the Space Tenant that: (i) Tenant has failed to pay the Rent due and payable under this Lease and that such failure to pay the Rent constitutes an “event of default” as defined in this Lease, and that (ii) rent payments under the applicable Space Lease are thereafter to be made to Landlord until such event of default is cured, Space Tenant and Tenant agree that Space Tenant shall thereafter make rent payments under the applicable Space Lease to Landlord notwithstanding any demand of Tenant to the contrary and that all such rent payments made by Space Tenant to Landlord shall be applied to Space Tenant’s obligations under the applicable Space Tenant Lease and to Tenant’s obligations under this Lease. Tenant’s agreement to the foregoing is without prejudice or waiver of any rights of Tenant under this Lease all of which are fully reserved but which shall be resolved between Landlord and Tenant without the involvement of Space Tenant.

- 17.5. **Security Assignment of Space Leases.** Subject to the rights of any Leasehold Mortgage, as security for the performance of Tenant’s obligations hereunder, Tenant hereby grants to Landlord a security interest in and to all of Tenant’s right to receive any rentals or other payments under all Space Leases and this Lease shall constitute a security agreement for such purposes under laws of the State of Washington. Landlord is authorized to file such financing statements as may be reasonably required to perfect such security interest.
- 17.6. **Rent Rolls and Other Information.** After completion of the New Improvements, at Landlord’s written request, but no more often than once in every Lease Year, Tenant shall provide Landlord with a rent roll listing as of such date all Space Leases and identifying the tenants, spaces leased, terms and basic rental rates, as applicable. Upon any early termination of this Lease (other than a termination pursuant to Sections 15 or 16), Tenant shall promptly deliver to Landlord copies of all Space Leases, lease files, correspondence and documents (including tenant estoppel certificates, subordination agreements and financial statements, if any). Except as agreed to by Tenant, as required by law or as reasonably necessary in connection with the good faith prosecution of Landlord’s ordinary business (including disclosure to its direct and indirect members and principals and their respective tax and legal advisors), Landlord shall keep confidential and not disclose to third parties any information or documents provided to Landlord under this Section.
- 17.7. **Assignment by Landlord.** The term “Landlord” as used in this Lease so far as covenants or obligations on the part of Landlord are concerned shall be limited to mean and include only the owner or owners at the time in question of the fee of the Property. If Landlord sells or otherwise transfers fee simple title to the Premises, the purchaser or transferee thereof shall be deemed to have assumed Landlord’s obligations hereunder which arise on or after the date of sale or transfer, and Landlord shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer, but this Lease shall otherwise remain in full force and effect. If Landlord assigns Landlord’s Interest under this

Lease without transferring fee simple title to the Premises to the same Person, the holder of fee simple title to the Premises shall remain liable for the performance of Landlord's obligations under this Lease.

17.8. **Condominium Conversion.** Subject to Landlord's written consent not to be unreasonably withheld, conditioned or delayed, Tenant may, and Landlord will cooperate with Tenant's efforts to, convert the Tenant's Interest into a leasehold condominium with two (2) separate units, one for the office building and one for the residential building (the "***Conversion***").<sup>1</sup> The retail and parking elements of the New Improvements will be included in one or both of the units. The Conversion is subject to compliance with the following provisions:

- (a) The Conversion will comply with the Washington Uniform Common Interest Ownership Act, RCW Chapter 64.90 ("**WUCIOA**").
- (b) The Conversion may not occur until after receipt of a certificate of occupancy permitting occupancy of the entire New Improvements and issuance of the Certificate of Completion. However, the parties will negotiate the form of the governing documents and resolve other matters for the Conversion prior to that time.
- (c) Contemporaneous with or following the Conversion, Tenant may require that Landlord replace this Lease with two (2) separate ground leases, one for the office unit and one for the residential unit (each a "***Unit Lease***"). The forms of Unit Lease and condominium declaration are subject to the reasonable approval of Landlord, which approval will not be withheld, conditioned or delayed if the forms of Unit Lease and condominium declaration include provisions consistent with the following principles, in each case to the extent applicable to the form:
  - A. Tenant would be named as the tenant under each Unit Lease (in each case a "***Unit Tenant***") until the applicable condominium unit is transferred in accordance with applicable transfer provisions of the Unit Lease. The transfer provisions will be substantially equivalent to the transfer provisions in this Lease.
  - B. Base Rent would be apportioned between the Unit Leases based upon the relative values of the condominium units or any other reasonable basis proposed by Tenant and approved by Landlord. Tenant will provide Landlord with a proposed allocation, which will be subject to Landlord's approval. If Landlord does not approve the proposed allocation, Landlord and Tenant will attempt to reach mutual agreement on the allocation. If they are unable to

---

<sup>1</sup> **Note:** The current plan is to have two units, one for office and one for residential. This is subject to change if Holland determines there is a need for the retail or parking components to be housed in a condominium unit.

do so within 30 days after Landlord presented its proposed allocation, Tenant will engage an appraiser, whose identity must be approved by Landlord. The appraiser will be engaged to determine the relative fair market values of the two condominium units. The appraiser's determination of fair market values will be deemed final and the Base Rent will be apportioned among the Unit Leases based upon the appraiser's determinations. Tenant will pay all fees and costs of the appraiser.

- C. Each Unit Lease will include the right for the Unit Tenant to purchase the Landlord's Interest specified in Section 24.16 of this Lease modified as provided in this subsection. Each Unit Tenant will have the several right to initiate the exercise the purchase right. The Unit Tenant exercising the right will, contemporaneously with such exercise, deliver a copy of the notice to the other Unit Tenant. The other Unit Tenant will then have a defined period of time to elect to participate in the purchase of the Landlord's Interest pro rata in accordance with the allocations of Base Rent discussed in subsection (b) above. If both Unit Tenants wish to purchase the Landlord's Interest, the purchase shall be allocated between the Unit Tenants pro rata in accordance with the allocations of Base Rent discussed in subsection (b). If the other Unit Tenant does not agree to participate, the Unit Tenant that initiates the exercise of the purchase right will hold the right to purchase, and will be obligated to purchase, the entire Landlord's Interest. The purpose of these provisions will be to assure Landlord that on any exercise of the purchase option, the purchaser (which may be one or multiple Unit Tenants) will be obligated to purchase the entire Landlord's Interest and pay the full Option Fair Market Value, and the Landlord will not be required to sell any less than the entire Landlord's Interest.
- D. The Unit Leases would not be cross-defaulted except as described below related to common element obligations.
- E. The Unit Lease for the residential building would include the provisions in Section 17.3 but not the provisions in Section 17.4, unless the Unit Lease for the residential building includes retail space.
- F. The Unit Lease for the office building would include the provisions in Section 17.4 but not the provisions in Section 17.3.
- G. Obligations to insure, maintain and repair common elements of the leasehold condominium will be joint and several obligations of the Unit Tenants under each Unit Lease. Each Unit Lease will provide that such obligations may be delegated to the owners' association

for the leasehold condominium (the “*Association*”) or to any Unit Tenant, provided such delegation does not relieve any Unit Tenant of its primary obligation. Upon a breach of the obligation to insure, maintain or repair common elements, each Unit Tenant and the Association will have the right to effect a cure and to be reimbursed of the costs (other than for its pro rata share) from the Association and/or the defaulting Unit Tenant. Additionally, if the breach of the obligation to insure, maintain and repair common areas is not timely cured and ripens into an Event of Default (after the giving of notice and the expiration of applicable cure periods including those in favor of any Leasehold Mortgagees), such Event of Default will be deemed to be an Event of Default under both of the Unit Leases. The purpose of these provisions will be to ensure Landlord that obligations ordinarily delegated to or assumed by the Association will be direct joint and several obligations of the Unit Tenants and that Landlord will not have to pursue remedies related to those obligations against the Association or partial remedies under any single Unit Lease. The Unit Leases and the declaration for the leasehold condominium will include provisions implementing this subsection.

- H. The Unit Tenants may, in their discretion, have the Association, rather than the individual Unit Tenants, procure and maintain casualty and liability insurance related to the insurable common elements, which will include the parking podium structure, and all or part of the improvements within each Unit.
- I. The legal description of the Premises under each Unit Lease will be substantially the same as the aggregation of property and property rights that constitutes the condominium interest applicable to the Unit Lease. For example, the legal description for the leasehold condominium corresponding to the office building will consist of (i) the undivided interest in the Land corresponding to the allocated interest of such Unit, (ii) the rights to build, develop, maintain and repair the New Improvements and Replacement Improvements that lie within the airspace boundaries for such Unit identified on the map for the leasehold condominium, and (iii) the rights to use and occupy common areas and easements that will be described in the declaration and shown on the map for the leasehold condominium. The intent of this provision is to use a legal description that is equivalent and fully contemplates all possessory, use and other rights held by the Unit Tenant under the applicable Unit Lease, so that on termination of the Unit Lease Landlord will succeed to and hold all of the rights previously held by the defaulting Unit Tenant, including with respect to participation in the Association.

- J. Each Unit Lease will allow and require that after the termination of any Unit Lease, other than upon the expiration or termination of all Unit Leases, Landlord will become the Unit Owner regarding the Unit formerly owned by the Unit Tenant under the terminated Unit Lease. As such Unit Owner, Landlord will succeed to all rights and obligations of such Unit Owner including those of a Unit Owner under WUCIOA and under the declaration and other governing documents of the leasehold condominium. Those rights include the non-exclusive use the common elements, exclusive use of the limited common elements allocated to such Unit, and all voting rights allocated to such Unit. Those obligations include payment of assessments and compliance with the governing documents.
- K. The conversion to condominium units and Unit Leases does not materially impair, diminish, prejudice or limit Landlord's rights and benefits as compared to Landlord's rights and benefits in the absence of such conversion. The intent of this provision is that Landlord should not be in a lesser position as compared to the Landlord's rights and benefits under this Lease, provided that that a default or an Event of Default under one Unit Lease will not be a default or an Event of Default under the other Unit Lease except as specifically provided in this Section 17.8.

18. **Leasehold Financing.**

- 18.1. **Right to Encumber.** Notwithstanding the provisions set forth in Section 17.1 regarding any assignment of this Lease, but subject to the provisions of this Section 18, Tenant shall have the right at any time and from time to time to encumber its Leasehold Estate by one or more Leasehold Mortgages. If Tenant desires to take advantage of the "proviso" contained in Section 16.2(a) above, Tenant shall give Landlord not less than ten (10) business days prior to the funding of the loan sufficient information in Tenant's possession regarding the amount of the loan and the then fair market value of the Improvements so that Landlord can verify that the amount of the Leasehold Mortgage, together with any previous Leasehold Mortgages still encumbering the Leasehold Estate, does not exceed eighty percent (80%) of the then fair market value of the Improvements. If Landlord desires to contest whether or not the amount of the Leasehold Mortgage, together with any previous Leasehold Mortgages still encumbering the Leasehold Estate, exceeds eighty percent (80%) of the then fair market value of the Improvements, Landlord shall provide Tenant with written notice that Landlord contests said valuation and the issue shall be submitted to binding arbitration as provided in Section 20 below. Any Leasehold Mortgagee shall have the unrestricted right to assign, sell, participate, securitize and otherwise deal with its security interest in the Leasehold Mortgage as it sees fit and without the necessity of obtaining any consent from Landlord. Landlord shall not in any way subordinate any of its rights under this Lease to any Leasehold Mortgagee and



any Leasehold Mortgagee who forecloses on its Leasehold Mortgage shall agree to abide by and be bound by all the terms of this Lease during the term of its ownership of the Tenant's Leasehold Estate. Tenant shall deliver to Landlord promptly after execution by Tenant a true and verified copy of any Leasehold Mortgage and any amendment, modification or extension thereof, together with the name and address of the Leasehold Mortgagee and shall pay or reimburse Landlord for all fees and costs, including reasonable attorneys' fees, incurred by Landlord in connection with review of said documents to insure compliance with this Lease. No Leasehold Mortgage shall be collateralized by property in addition to the Premises.

18.2. **Covenants of Landlord.** During the continuance of any Leasehold Mortgage until such time as the lien of any Leasehold Mortgage has been extinguished, and if a copy of such Leasehold Mortgage shall have been delivered to Landlord together with a written notice of the name and address of the owner and holder thereof as provided in Section 18.1:

- (a) Landlord shall not agree to any mutual termination nor accept any surrender of this Lease (except upon the expiration of the Lease Term as provided herein) nor shall Landlord consent to any amendment or modification of this Lease, without the prior written consent of the Leasehold Mortgagee, which consent shall not be unreasonably withheld or delayed.
- (b) Notwithstanding any default by Tenant in the performance or observance of any covenant, condition or agreement of this Lease on the part of Tenant to be performed or observed, Landlord shall have no right to terminate this Lease even though an Event of Default under this Lease shall have occurred and be continuing, unless and until Landlord shall have given the Leasehold Mortgagee written notice of such Event of Default and the Leasehold Mortgagee shall have failed to remedy such default or to acquire Tenant's Leasehold Estate or to commence foreclosure or other appropriate proceedings in the nature thereof, all as set forth in, and within the time specified by, this Section 18.
- (c) The Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the Rents due hereunder, to provide any insurance, to pay any taxes and make any other payments, to make any repairs and improvements and do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the covenants, conditions and agreements hereof to prevent the termination of this Lease. All payments so made and all things so done and performed by the Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Tenant instead of by the Leasehold Mortgagee.

- (d) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease which do not require possession of the Property within thirty (30) days after receipt of such written notice and shall thereafter continue to faithfully perform all such monetary obligations which do not require possession of the Property. An Event of Default under this Lease which in the nature thereof cannot be remedied by the Leasehold Mortgagee shall be deemed to be remedied if (i) within sixty (60) days after receiving written notice from Landlord setting forth the nature of such Event of Default, the Leasehold Mortgagee shall have acquired Tenant's Leasehold Estate or commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) the Leasehold Mortgagee shall diligently and continuously prosecute any such proceedings to completion, (iii) the Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease which do not require possession of the Property within such thirty (30) days after receipt of such written notice and shall thereafter continue to faithfully perform all such monetary obligations which do not require possession of the Property, and (iv) after acquiring Tenant's interest in the Property, the Leasehold Mortgagee shall perform all of the obligations of Tenant hereunder as and when the same are due, accruing after Leasehold Mortgagee has obtained possession of the Property. All rights of Landlord to terminate this Lease as the result of the occurrence of any such Event of Default shall be subject to and conditioned upon Landlord having first given the Leasehold Mortgagee written notice of such Event of Default and the Leasehold Mortgagee having failed to remedy such default or acquire Tenant's Leasehold Estate or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time period specified by this Section 18.2(d). If an Event of Default is cured by the Leasehold Mortgagee, this Lease shall continue in full force and effect as if such Event of Default had not occurred. No Leasehold Mortgagee shall have any obligation to cure or attempt to cure any Event of Default and may abandon or discontinue its efforts to cure at any time.
- (e) If the Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy, debtor rehabilitation or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Section 18.2(d) above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due, and provided that the Leasehold Mortgagee shall diligently attempt to remove any such prohibition.

- (f) Foreclosure of a Leasehold Mortgage, whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage, or any conveyance of the Leasehold Estate from Tenant to the Leasehold Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, Landlord shall recognize the Leasehold Mortgagee, or any other foreclosure sale purchaser, as Tenant hereunder so long as the Leasehold Mortgagee or the foreclosure purchaser agrees in writing to abide by all of the provisions of the Lease accruing from and after the date the Leasehold Mortgage acquires Tenant's title to the Property, and so long as there is no monetary default under this Lease. If there are two or more Leasehold Mortgages or foreclosure sale purchasers (whether of the same or different Leasehold Mortgages), Landlord shall have no duty or obligation whatsoever to determine the relative priorities of such Leasehold Mortgages or the rights of the different holders thereof and/or foreclosure sale purchasers. If the Leasehold Mortgagee becomes the Tenant under this Lease or under any new lease obtained pursuant to Section 18.2(g) below, the Leasehold Mortgagee shall be liable for the obligations of Tenant under this Lease or such new lease arising during the period of time that the Leasehold Mortgagee is the tenant hereunder or thereunder. If the Leasehold Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or by an acceptance of a deed in lieu of foreclosure or subsequently assigns or transfers its interest under any such new lease, and in connection with any such assignment or transfer the Leasehold Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to the Leasehold Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a Leasehold Mortgage as contemplated under this Section 18 and the Leasehold Mortgagee shall be entitled to receive the benefit of and shall be bound by the provisions of this Section 18 and any other provisions of this Lease intended for the benefit or burden of the holder of a Leasehold Mortgage.
- (g) Should Landlord terminate this Lease by reason of any Event of Default by Tenant hereunder or if this Lease is rejected in any bankruptcy proceedings with respect to Tenant, Landlord shall, upon written request by the Leasehold Mortgagee to Landlord received within thirty (30) days after such termination, execute and deliver a new lease of the Premises to the Leasehold Mortgagee for the remainder of the term of this Lease with the same covenants, conditions and agreements (except for any requirements which have been satisfied by Tenant prior to termination) as are contained herein. Together with the execution and delivery of such new lease of the Premises, Landlord shall convey to the Leasehold Mortgagee title to any Improvements constructed by Tenant by quitclaim deed for the term of such new lease. Landlord's delivery of any

Improvements to the Leasehold Mortgagee pursuant to such new lease shall be made without representation or warranty of any kind or nature whatsoever, either express or implied; and the Leasehold Mortgagee shall take any Improvements “as-is” in their then current condition. Upon execution and delivery of such new lease, the Leasehold Mortgagee, at its sole cost and expense, shall be responsible for taking such action as shall be necessary to cancel and discharge this Lease and to remove Tenant named herein and any other occupant from the Property. Landlord’s obligation to enter into such new lease of the Premises with the Leasehold Mortgagee shall be conditioned as follows: (i) the Leasehold Mortgagee has remedied and cured all monetary defaults hereunder, and (ii) that the Leasehold Mortgagee pays all costs and expenses of Landlord, including, without limitation, reasonable attorneys’ fees, real property transfer taxes and any escrow fees and recording charges, incurred in connection with the preparation and execution of such new lease and any conveyances related thereto. If more than one Leasehold Mortgagee requests such new lease Landlord shall have no duty or obligation whatsoever to determine the relative priority of such Leasehold Mortgages, and, in the event of any dispute between or among the holders thereof, Landlord shall have no obligation to enter into any such new lease if such dispute is not resolved to the sole satisfaction of Landlord within ninety (90) days after the date of termination of this Lease.

- (h) Any Leasehold Mortgagee shall be given notice of any arbitration or appraisal proceedings arising out of or in connection with this Lease and will have the right to intervene in the proceedings. If a Leasehold Mortgagee elects not to intervene it will nonetheless be given notice and a copy of any award or decision made in such proceedings.
- (i) Landlord and Tenant agree to execute, acknowledge and deliver to any Leasehold Mortgagee, an agreement in form reasonably acceptable to Landlord prepared at the sole expense of Tenant including reimbursement of Landlord’s reasonable attorney fees and costs, reaffirming the applicability of the provisions of this Section 18 to a particular Leasehold Mortgage within fifteen (15) days of delivery to Landlord.
- (j) Leasehold Mortgagee’s liability following its acquisition of title to the Property shall be limited to Leasehold Mortgagee’s interest in the Property. Leasehold Mortgagee is a third-party beneficiary to all the provisions of this Section 18.

18.3. **Obligations of Tenant.** Nothing contained herein or in any Leasehold Mortgage shall be deemed or construed to relieve Tenant from the full and faithful observance and performance of its covenants, conditions and agreements contained herein, or from any liability for the non-observance or non-performance thereof, or to require or provide for the subordination to the lien of such

Leasehold Mortgage of any estate, right, title or interest of Landlord in or to the Property or this Lease.

18.4. **Landlord's Lien Waivers.**

- (a) **As to Tenant.** Tenant shall have the absolute right from time to time during the Lease Term and without Landlord's further approval, written or otherwise, to grant and assign a mortgage or other security interest in all of Tenant's furniture, trade fixtures, equipment, inventory and other personal property ("***Tenant's Personal Property***") to Tenant's lenders in connection with Tenant's financing arrangements. Landlord agrees, upon reimbursement for all of its costs and expenses including reasonable attorney's fees, to execute such confirmation, certificates and other documents (except amendments to this Lease unless Landlord hereafter consents) as Tenant's lenders may reasonably request (with such conditions as Landlord may reasonably impose) in connection with any such financing including waivers of any claims arising by way of any landlord's lien (whether created by statute, contract or otherwise).
- (b) **As to Space Tenants.** On request, Landlord shall execute and deliver to Space Tenants, upon reimbursement for all of Landlord's costs and expenses including reasonable attorney's fees, a landlord waiver and consent for the benefit of lenders to the tenants under Space Leases, pursuant to which Landlord consents to the installation of furniture, trade fixtures, equipment, inventory and other personal property ("***Space Tenant's Personal Property***") in the Space Tenant's premises, waives any lien or security interest in any of the Space Tenant's Personal Property, agrees to allow the Space Tenant's lender access to its subleased premises in order to remove the Space Tenant's Personal Property therefrom or otherwise realize on its security interest in such property from the subleased premises, and to provide Landlord, the Space Tenant and its lender with such other protections as are reasonably appropriate under the circumstances. Landlord shall have the right to approve the form of landlord waiver and consent, which approval shall not be unreasonably withheld, conditioned or delayed. The Space Tenant's Personal Property shall not include equipment or machinery constituting real estate fixtures or such equipment or machinery which is necessary to the operation of the Property or the premises of any tenant under a Space Lease. Any right to remove the Space Lease Tenant's Personal Property shall be subject to the requirement that the lender repair and restore any damage to the Property resulting from such removal.

- 18.5. **Landlord's Leasehold Financing.** Landlord agrees that Tenant's rights under this Lease are and always shall be superior to the lien of any mortgage and/or deed of trust now or hereafter placed upon the Landlord's Interest by Landlord on behalf of any lender making a loan to Landlord that is secured by the Landlord's Interest ("**Landlord's Lender**") and Tenant's rights under this Lease shall not be

disturbed by any Landlord's Lender, mortgagee, beneficiary under a deed of trust, or purchaser at a foreclosure sale except to the extent Tenant shall breach any of the provisions of this Lease and fails to cure such breach within the time permitted hereunder and this Lease or Tenant's rights to possession of the Property hereunder shall have been lawfully terminated in accordance with the provisions of this Lease.

- (a) Landlord agrees that it will request the holder of such encumbrance or encumbrances to send duplicate notices of any defaults thereunder to Tenant and that Tenant may record a request for notice of default with respect to any encumbrance placed upon the Property by Landlord. In the event of a default by Landlord in making any payments with respect to encumbrances permitted to be placed upon the Property by Landlord, Tenant shall have the right, but not the obligation, to pay any such sums that may be due upon such encumbrances, and the amounts so paid by Tenant shall be credited against rents next becoming due hereunder.
- (b) Tenant agrees in conjunction with any financing by Landlord of its interest in the Property (including Landlord's current financing) to execute such acknowledgments and other documents regarding this Lease as may reasonably be requested by the holder of such financing, provided that Tenant is provided with a non-disturbance and attornment agreement with terms consistent with the provisions of this Lease executed by the holder of such financing. Tenant agrees that such non-disturbance and attornment agreements may include, and Tenant shall execute a non-disturbance and attornment agreement which includes, any or all of the following provisions:
  - A. Upon foreclosure of the deed of trust or the granting of a deed in lieu of foreclosure or the exercise of any other remedy available to Landlord's Lender under the loan documents for such loan ("Loan Documents") or applicable law pursuant to which Landlord's Lender or any other entity or person succeeds to some or all of the interest of Landlord as the owner of the Property ("Successor Landlord"), the Lease shall continue in full force and effect as though the default giving rise to such action had not occurred. Successor Landlord shall recognize all of the rights and interest of Tenant under the Lease and shall perform all of the duties and responsibilities of the Landlord under the Lease with the same force and effect and with the same priority in right as if the Lease were directly made between Successor Landlord and Tenant, so long as Tenant is not in default thereunder beyond any applicable cure period available to Tenant by law, in equity or by the terms of the Lease. Notwithstanding anything contained in this Lease or the deed of trust to the contrary, Successor Landlord shall not be liable for or bound by any of the following:

- (A) any act or omission of any prior Landlord (including Landlord), provided that Successor Landlord, following foreclosure, cures any ongoing default within the time provided in subsection (c) below;
  - (B) subject to any offsets or defenses which Tenant might have against any prior Landlord (including Landlord); provided that Successor Landlord, following foreclosure, cures any ongoing default within the time provided in Subsection (c) below;
  - (C) any rent or additional rent which Tenant might have paid for more than the current month to any prior Landlord (including Landlord) or for any security deposit paid to any prior Landlord (including Landlord) which has not been received by Successor Landlord;
  - (D) any obligation to pay for, construct or finish the construction of any improvement or construction obligations under the Lease, including, but not limited to, any tenant improvement allowance;
  - (E) any obligation to pay Tenant any sum(s) that any prior Landlord (including Landlord) owed to Tenant.
- (c) Upon Successor Landlord succeeding to Landlord's interest in the Property or otherwise acquiring title to the Property through foreclosure under the Loan Documents, the granting of a deed in lieu thereof or otherwise, Tenant shall attorn to and recognize Successor Landlord to the same extent and with the same force as if such owner were the Landlord under the Lease and shall be bound by and perform all of the obligations imposed upon Tenant under the Lease. Tenant's attornment hereunder shall be effective and self-operative without the execution of any other instruments on the part of any party and shall be effective concurrently with Successor Landlord's acquisition of title to the Property.
- (d) So long as any deed of trust remains outstanding and unsatisfied, Tenant will mail or deliver to Landlord's Lender at the address and in the manner hereinbelow provided, a copy of all notices of default permitted or required to be given to the Landlord by Tenant (as and when given) under and pursuant to the terms and provisions of the Lease. Landlord's Lender may, but shall have no obligation to, cure any default of Landlord within the latest to occur of the following: (i) at any time before the rights of the Landlord shall have been forfeited or adversely affected because of any default of the Landlord; (ii) thirty (30) days beyond the time permitted the Landlord for curing any default under the Lease as therein provided; or (iii) as to any breach or default which requires possession and control of

the Property or Project to cure, such additional time as Landlord's Lender may reasonably require to either (a) obtain possession and control of the Property or Project and thereafter cure the breach or default with reasonable diligence and continuity, or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure such breach or default.

- (e) Tenant acknowledges that Landlord has or will execute and deliver to Landlord's Lender an Assignment of Leases as security for the Loan, and Tenant hereby expressly consents to such assignment, provided it is on the terms specified herein and not otherwise.
- (f) In the event Tenant receives written notice from Landlord's Lender that there has been a default under the Loan and that rents due under the Lease are to be paid to Landlord's Lender pursuant to the terms of the Assignment of Leases, Tenant shall pay to Landlord's Lender, or in accordance with the directions of Landlord's Lender, all rents and other monies due or to become due to Landlord under the Lease.

19. **Default.**

19.1. **Events of Default.** The occurrence of any of the following shall be an ("***Event of Default***") under this Lease.

- (a) Tenant fails to pay any Rent within five (5) business days after notice that the payment was not received when due.
- (b) Tenant fails to perform any other obligation to Landlord under this Lease and this failure continues for thirty (30) days after written notice from Landlord, except that if Tenant begins to cure its failure within the thirty (30) day period but cannot complete its cure within such period, then, so long as Tenant continues to diligently attempt to cure its failure, the thirty (30) day period shall be extended as is reasonably necessary to complete the cure; provided, however, that if a governmental permit or other regulatory authorization is necessary to effect the cure, the cure period shall be extended by such period of time as is required to obtain such permit or other regulatory authorization in the exercise of Tenant's due diligence.
- (c) If Tenant shall abandon the Property.
- (d) Tenant commences any proceeding under any law relating to bankruptcy, insolvency, reorganization or relief of debts, or seeks appointment of a receiver, trustee, custodian or other similar official for Tenant or for any substantial part of its property, or any such proceeding is commenced against Tenant and either remains undismissed for a period of sixty (60) days or results in the entry of an order for relief against Tenant which is not fully stayed within sixty (60) days after entry;



- (e) Tenant becomes insolvent or bankrupt, does not generally pay its debts as they become due, or admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors;
- (f) Any third party obtains a levy or attachment under process of law against Tenant's leasehold interest or the Improvements, which is not reversed, released or stayed within sixty (60) days after the entry thereof.

19.2. **Landlord's Remedies.** Upon the occurrence of an Event of Default, Landlord shall have the option to take any or all of the following actions, without further notice or demand of any kind to Tenant or any other person:

- (a) Maintain this Lease in full force and effect and recover the Rent, Additional Rent and other monetary charges as they become due, without terminating Tenant's right to possession irrespective of whether Tenant shall have abandoned the Premises. In the event Landlord elects not to terminate this Lease, Landlord shall have the right to attempt to relet the Premises or any portion thereof at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate this Lease, including removal of all persons and property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant and may be sold or otherwise disposed of upon twenty (20) days prior written notice to Tenant delivered to the address set forth in Section 23.3 below or such other address of which Landlord has been notified in writing.
- (b) Terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including without limitation thereto, the following: (i) the worth at the time of award of any unpaid Rent and Additional Rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid Rent and Additional Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid Rent and Additional Rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the damages proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom, including, without limitation, costs of reletting, tenant improvements, leasing commissions, cost of repairs, renovation or

demolition of the Improvements and all other costs of returning the Premises to a marketable condition; plus (v) all attorneys' fees and costs incurred by Landlord in retaking the Premises and collecting amounts due from Tenant; plus (vi) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable state law. Upon any such reentry Landlord shall have the right to make any reasonable repairs, alterations or modifications to the Premises which Landlord in its sole discretion deems reasonable and necessary. As used in (i) above, the "worth at the time of award" is computed using a discount rate equal to the yield on ten (10) year United States Treasury notes as of the close of business on the day preceding the date of calculation.

- (c) Terminate the Parking License.

19.3. **Effect of Debt and Equity Default.**

- (a) Any provision of this Lease to the contrary notwithstanding, in the event of a Debt and Equity Default, So long as Tenant pays rent as and when due and otherwise performs its obligations under the Lease, other than the timely completion of construction of the New Improvements, Landlord shall forebear exercising its remedies, including without limitation termination of the Lease, until after the Cure Period Expiration.
- (b) Contemporaneously with a Cure Period Termination, Guarantor's obligations under the Guaranty shall terminate and be of no further force or effect, and Landlord may elect to either: (1) terminate this Lease and take title to the Premises and New Improvements, (but with the right to seek the compensation described in Section 19.2(b)), or (2) require Guarantor to purchase the Premises for the amount of Three Million Three Hundred Thousand Dollars (\$3,300,000); provided that Guarantor may designate an affiliate to complete the purchase. On the effective date of the termination of this Lease or the closing of the purchase referenced above, this Lease shall be deemed to be of no further force or effect, except for the terms and conditions which expressly survive such termination and that Tenant shall remain liable for any liabilities that accrued prior to the date of the termination of the Lease.
- (c) This Section 19.3 shall be deemed to be of no further force or effect upon issuance of the Certificate of Completion.

19.4. **Landlord's Remedies Cumulative; Default Rate.** All of Landlord's remedies under this Lease shall be in addition to all other remedies Landlord may have at law or in equity. Waiver by Landlord of any breach of any obligation by Tenant shall be effective only if it is in writing, and shall not be deemed a waiver of any other breach, or any subsequent breach of the same obligation. Landlord's acceptance of payment by Tenant shall not constitute a waiver of any breach by

Tenant except for any breach with respect to the payment so accepted. Landlord may advance such monies and take such other actions for Tenant's account as reasonably may be required to cure or mitigate any default by Tenant. Tenant shall immediately reimburse Landlord for any such advance, and such sums shall bear interest at the default interest rate until paid. Lessee agrees to pay Lessor interest from the original due date of any amount due hereunder to the date of payment at a rate equal to twelve percent (12%) per annum, but in no event more than the highest rate of commercial interest allowed under applicable law

- 19.5. **WAIVER OF TRIAL BY JURY.** EACH PARTY WAIVES TRIAL BY JURY IN THE EVENT OF ANY LEGAL PROCEEDING (OTHER THAN CONDEMNATION PROCEEDINGS) IN CONNECTION WITH THIS LEASE. EACH PARTY SHALL BRING ANY ACTION AGAINST THE OTHER IN CONNECTION WITH THIS LEASE IN A FEDERAL OR STATE COURT LOCATED IN CLARK COUNTY, WASHINGTON, CONSENTS TO THE JURISDICTION OF SUCH COURTS, AND WAIVES ANY RIGHT TO HAVE ANY PROCEEDING TRANSFERRED FROM SUCH COURTS ON THE GROUND OF IMPROPER VENUE OR INCONVENIENT FORUM.
- 19.6. **Landlord's Cure.** Landlord may cure, at Landlord's sole option without any obligation to do so, any Event of Default by Tenant. Any expenses so incurred (including attorneys' fees and costs) shall become Additional Rent due from Tenant on demand by Landlord, together with interest as set forth in Section 23 below accruing from the date Landlord makes the advance.
- 19.7. **Legal Expenses.** If either Landlord or Tenant shall commence any legal proceedings against the other with respect to any of the terms and conditions of this Lease or if either party brings any action in Bankruptcy Court, commences or defends against any declaratory action, collection action, appeal or other action in state or federal court regarding this Lease, the non-prevailing party therein shall pay the prevailing party all costs and expenses of such litigation incurred by the prevailing party, including reasonable attorneys' fees, as may be fixed by the court having jurisdiction over the matter, including costs and fees on appeal. The parties hereto agree that Clark County, Washington, is the proper jurisdiction for litigation of any matters relating to this Lease.
- 19.8. **No Punitive Damages.** Neither Landlord nor Tenant shall be entitled to any punitive damage award against the other party in any action or proceeding arising out of or related to this Lease.
- 19.9. **Tenant's Remedies in Event of Default by Landlord.** The failure by Landlord to observe or perform any of the covenants of this Lease to be performed by Landlord, where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by Tenant to Landlord and to any lender of Landlord who has requested such notice in writing to Tenant and who has provided an address to which such notice can be given, shall constitute a default

and breach of this Lease by Landlord; provided, however, that Landlord shall not be deemed to be in default if Landlord, or Landlord's lender, commences to cure such failure within thirty (30) days after receipt of notice and thereafter diligently prosecute such cure to completion within a reasonable time. In the event of any material default or breach by Landlord, Tenant's sole and exclusive remedy shall be to specifically enforce the terms and conditions of this Lease except in the event Landlord's default has made the remedy of specific enforcement impossible or unavailable and in such event Tenant may seek to recover from Landlord any and all damages incurred by Tenant by reason of Landlord's default or breach and/or to pursue any other remedy now or hereafter available to Tenant at law or in equity; provided, however, that Tenant shall have no right to terminate this Lease unless there has been a judicial determination of Landlord's default and Landlord has not thereafter cured the default.

20. **Arbitration Provisions.**

20.1. **Issues Subject to Arbitration.** Any matter specifically made subject to arbitration in this Lease or which Tenant and Landlord now or hereafter agree in writing to submit to arbitration shall be settled by arbitration in accordance with the provisions of this Section.

20.2. **Selection of Arbitrator.** Such arbitration shall be before one (1) disinterested qualified arbitrator if one can be agreed upon, otherwise before three (3) disinterested arbitrators, one named by Landlord, one named by Tenant, and one by the two (2) thus chosen; provided, that if said two (2) arbitrators cannot agree upon a third arbitrator within fifteen (15) days of their appointment, then said third arbitrator shall be appointed by the Presiding Judge of Clark County Superior Court upon motion of either Landlord or Tenant. The appointment of arbitrators shall be signified in writing by each party to the other. If Landlord or Tenant shall fail to so appoint an arbitrator for a period of twenty-five (25) days after written notice from the other party to make such appointment, then the arbitrator appointed by the first party shall appoint a second arbitrator and the two (2) so appointed shall appoint a third arbitrator. A "disinterested arbitrator" shall be a person who shall not have direct or indirect financial or other interest in the decisions to be made by the arbitrator(s) and who shall not be an officer, director, employee, or agent of Landlord or Tenant.

20.3. **Arbitration Procedure.** The arbitrator or arbitrators shall determine the controversy in accordance with a commercially reasonable standard and the laws of the State of Washington as applied to the facts found by arbitrator(s) and, unless the parties otherwise agree, in accordance with the commercial arbitration rules of the American Arbitration Association with expedited procedures. The arbitrator or arbitrators shall make awards in strict conformity with such rules and shall have no power to depart from or change any of the provisions thereof. All arbitration proceedings hereunder shall be conducted in the City of Vancouver, Washington. The arbitrator or arbitrators, after being duly sworn to perform all duties with impartiality and fidelity shall proceed to determine the question or

questions submitted. The decision of the arbitrator or arbitrators shall be rendered within thirty (30) days after appointment, and such decision shall be in writing and in duplicate, one counterpart thereof to be delivered to each of the parties hereto. Absent fraud, collusion or willful misconduct by an arbitrator, the award of the arbitrator or arbitrators shall be binding, final and conclusive on the parties, and judgment on such award rendered may be entered in any court having jurisdiction thereof. Fees of the arbitrator or arbitrators and the expenses incident to the proceedings shall be borne equally between Landlord and Tenant. Fees of the respective counsel engaged by the parties, and fees of expert witnesses or other witnesses called for the parties shall be paid by the respective party engaging such counsel or calling or engaging such witness.

- 20.4. **Confidentiality.** Except as agreed to by the parties, as required by law or as reasonably necessary in connection with the good faith prosecution of the parties' ordinary business (including disclosure to a party's partners, members and principals and their respective tax and legal advisors), the parties and the mediator and/or arbitrator shall keep confidential and not disclose to third parties any information or documents obtained in connection with the arbitration process, including the resolution of the dispute.

21. **Bankruptcy Provisions.**

- 21.1. **Assumption of Lease.** If Tenant becomes a debtor under Chapter 7 of the Bankruptcy Code or a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapter 11 of the Bankruptcy Code, or a proceeding is filed under Chapter 7 of the Bankruptcy Code and is transferred to Chapter 11 of the Bankruptcy Code, the Bankruptcy Trustee or Tenant, as debtor and as debtor-in-possession, may not elect to assume this Lease unless, at the time of such assumption, the Bankruptcy Trustee or Tenant has:

- (a) Cured all defaults under the Lease and paid all sums due and owing under the Lease or provided Landlord with "Adequate Assurance" (as defined below) that: (i) within ten (10) days from the date of such assumption, the Bankruptcy Trustee or Tenant will completely pay all sums then due and owing under this Lease and compensate Landlord for any actual pecuniary loss resulting from any existing default or breach of this Lease, including without limitation, Landlord's reasonable costs, expenses, accrued interest, and attorneys' fees incurred as a result of the default or breach or incurred in the bankruptcy proceeding; and (ii) within twenty (20) days from the date of such assumption, the Bankruptcy Trustee or Tenant will cure all non-monetary defaults and breaches under this Lease, or, if the nature of such non-monetary defaults is such that more than twenty (20) days are reasonably required for such cure, that the Bankruptcy Trustee or Tenant will commence to cure such non-monetary defaults within twenty (20) days and thereafter diligently and in good faith continuously prosecute such cure to completion; and (iii) the assumption will be subject to all of the provisions of this Lease.

- (b) Landlord and Tenant acknowledge that, in the context of a bankruptcy proceeding involving Tenant, at a minimum, “Adequate Assurance” shall mean: (i) the Bankruptcy Trustee or Tenant has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that the Bankruptcy Trustee or Tenant will have sufficient funds and/or income to fulfill all obligations of Tenant under this Lease, and (ii) the Bankruptcy Court shall have entered an order segregating sufficient cash payable to Landlord and/or the Bankruptcy Trustee or Tenant shall have granted a valid and perfected first post-petition lien and security interest and/or super priority mortgage in or on property of Bankruptcy Trustee or Tenant acceptable as to value and kind to Landlord, to secure to Landlord the obligation of the Bankruptcy Trustee or Tenant to cure the monetary and/or non-monetary defaults and breaches under this Lease within the time periods set forth above.

21.2. **Assignment of Lease.** If the Bankruptcy Trustee or Tenant has assumed the Lease pursuant to the provisions of this Section for the purpose of assigning Tenant’s interest hereunder to any other person or entity, such interest may be assigned only after the Bankruptcy Trustee, Tenant or the proposed assignee have complied with all of the terms, covenants and conditions of this Lease. Landlord and Tenant acknowledge that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assignment.

21.3. **Adequate Protection.** Upon the filing of a petition by or against Tenant under the Bankruptcy Code, Tenant, as Debtor and as Debtor-In-Possession, and any Bankruptcy Trustee who may be appointed agree to adequately protect Landlord as follows: (i) to perform each and every obligation of Tenant under this Lease until such time as this Lease are either rejected or assumed by Order of the Bankruptcy Court; (ii) to pay all monetary obligations required under this Lease, including without limitation, the payment of Rent, Additional Rent and any other sum payable by Tenant under this Lease which is considered reasonable compensation for the use and occupancy of the Property; (iii) provide Landlord a minimum of thirty (30) days prior written notice, unless a shorter period is agreed to in writing by the parties, of any proceeding relating to any assumption of this Lease or any intent to abandon the Property, which abandonment shall be deemed a rejection of this Lease; and (iv) to perform for the benefit of Landlord as otherwise required under the Bankruptcy Code. The failure of Tenant to comply with the above shall result in an automatic rejection of this Lease.

22. **Hazardous Substances.** Tenant shall comply and shall cause all of its subtenants, agents, licensees and other occupants of the Premises or any portion thereof to comply,

with all federal, state and local laws, ordinances, rules and regulations relating to the handling, use, generation, accumulation, storage, transportation, disposal, treatment or sale of all Hazardous Substances in, on or under the Premises, whether now existing or hereafter arising. Tenant hereby expressly releases Landlord and its officers, agents, directors, representatives, shareholders, members, subsidiaries, affiliates, related entities, partners, employees, attorneys and lenders from and waives all claims against such parties for Tenant's fees, costs, losses and liabilities, including without limitation development cost increases, due to the removal or remediation of any Hazardous Substances on the Property as of the Commencement Date. Landlord hereby assigns to Tenant all claims relating to Hazardous Substances which Landlord has or may have against all Persons, their heirs, successors or assigns, who have occupied any of the Property prior to the Commencement Date, whether as holders of fee simple title to any of the Property or under a lease from Landlord or any of its predecessors in title to any of the Property or otherwise, but upon any termination or expiration of this Lease any such claims shall be deemed to have been reassigned to Landlord. In furtherance thereof, and notwithstanding such present assignment of all of such claims, Landlord will execute and deliver to Tenant any document or instrument requested by Tenant for the purpose of better carrying out the foregoing assignment.

Tenant shall give notice to Landlord promptly after learning of any release of any Hazardous Substance on or at the Premises or surrounding environment. This notice shall include a description of measures taken or proposed to be taken by Tenant to obtain and/or remedy the release and any resulting damage to property, persons or the environment, if such measures are required by applicable Law. At Tenant's own expense, Tenant shall promptly take all steps necessary to contain and remedy any release of Hazardous Substances in, on or under the Property, the Improvements or surrounding environment, and all resultant damage or injury to property, persons and the environment.

Upon termination of this Lease, Tenant shall remove all Hazardous Substances and shall decontaminate, decommission and sterilize all areas in the Premises in which Hazardous Substances were generated, stored, accumulated, released, or otherwise present in violation of any Environmental Law.

Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, demands, damages, costs, fees, penalties, and charges asserted against, imposed upon, and incurred by Landlord (including fees and costs of attorneys, consultants, laboratory testing charges and personal injury claims) as a result of (i) the presence, handling, use, generation, accumulation, storage, transportation, disposal, treatment and/or sale of Hazardous Substances at the Property or Improvements; (ii) presence of Hazardous Substances in, on, under or at the Premises on or prior to the Commencement Date; (iii) the release of any Hazardous Substance on or at the Property or Improvements which is attributable to any act or omission of Tenant, or its employees, agents, invitees or subtenants; (iii) the failure of Tenant, or its employees, agents, invitees or subtenants to comply with any Environmental Laws; (iv) Tenant's failure to remove all Hazardous Substances or decontaminate, decommission, or sterilize all areas in the Property in which any of Hazardous Substances were generated, stored, handled, accumulated,

released or otherwise present in accordance with applicable Law; and (v) Tenant's failure to comply with any other requirement of this Section 22.

23. **General Provisions.**

23.1. **Right of Inspection.** Tenant shall permit Landlord and its agents to enter into and upon the Premises at any reasonable time upon reasonable prior notice for the purpose of determining Tenant's compliance with this Lease, except in the case of an emergency for which advance notice shall not be required. Landlord will conduct such inspections in such manner and at such time to minimize, to the extent reasonably possible, disturbance of any Space Tenants and will comply with Tenant's reasonable instructions.

23.2. **Removal of Property.** Upon expiration or sooner termination of this Lease, Tenant may remove its trade fixtures, office supplies and movable office furniture and equipment not attached to the Improvements provided: (a) such removal is made prior to the termination or expiration of this Lease, (b) there is then no uncured Event of Default under this Lease, and (c) Tenant immediately repairs all damage caused by or resulting from such removal. All other property in or around the Premises and any alterations or additions thereto (including, without limitation, wall-to-wall carpeting, paneling, wall covering or lighting fixtures and apparatus) and any other article affixed to the floor, wall or ceiling of the Improvements or any other improvement shall become the property of Landlord and shall remain upon and be surrendered with the Premises, Tenant hereby waiving all rights to any payment or compensation therefor. If, however, Landlord so requests in writing before the expiration or termination of this Lease, Tenant will, prior to termination of this Lease, remove such alterations, additions, fixtures, equipment, cabling, wiring and property placed or installed by it in or about the Premises as requested by Landlord, and will immediately repair any damage caused by or resulting from such removal. If Tenant shall fail to remove any of its property of any nature whatsoever from the Premises at the termination of this Lease or when Landlord has the right of reentry, Landlord may, at its option, remove and store said property without liability for loss thereof or damage thereto, such storage to be for the account and at the expense of Tenant. If Tenant shall not pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, Landlord may, at its option, sell, or permit to be sold, any or all of such property at public or private sale (and Landlord may become a purchaser at such sale), in such manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to Tenant, and shall apply the proceeds of such sale: first, to the cost and expense of such sale, including reasonable attorneys' fees actually incurred; second, to the payment of the costs or charges for storing any such property; third, to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and, fourth, the balance, if any, to Tenant.

23.3. **Successors and Assigns.** Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this Lease shall be



binding upon the heirs, legal representatives, successors and assigns of any or all of the parties hereto.

- 23.4. **Notices.** All notices, demands, requests, consents, approvals, and other communications (collectively, “*Notices*”), required or permitted to be given hereunder, shall be in writing and sent by email and by either: (i) registered or certified mail, postage prepaid, return receipt requested; or, (ii) special delivery service (*e.g.* Federal Express, DHL, UPS, *etc.*); addressed to the party to be so notified as follows:

**Landlord’s Address:**

City of Vancouver  
415 West 6th Street  
Vancouver, WA 98660  
Attn: \_\_\_\_\_

**With Copies to:**

City of Vancouver  
415 West 6th Street  
Vancouver, WA 98660  
Attn: City Attorney

Houlihan Law PC  
303 E. 16th Street, Suite 201  
Vancouver, WA  
[John@houlihan-law.com](mailto:John@houlihan-law.com)  
[jt@houlihan-law.com](mailto:jt@houlihan-law.com)

**Tenant’s Address:**

Holland Acquisition Co., LLC  
c/o Holland Partner Group  
1111 Main Street, Suite 700  
Vancouver, WA 98660  
Attn: Legal Notices  
[notices@hollandpartnergroup.com](mailto:notices@hollandpartnergroup.com)

**With a Copy to:**

Oregon Law Group, P.C.  
1675 SW Marlow Avenue, Suite 404  
Portland, OR 97225  
Attn: Joel Kaplan  
[notices@oregonlawgroup.com](mailto:notices@oregonlawgroup.com)

Each Notice sent in accordance with the requirements of this Section shall be deemed effectively given upon actual receipt or refusal to accept receipt. Each person designated herein to receive any Notice or a copy thereof may change the address at which, or the person to whom, Notice or a copy thereof is to be delivered, by Notice given in accordance with the requirements of this Section; provided that the new notice address shall not be a post office box.

- 23.5. **Holdover**. If Tenant shall, with the written consent of Landlord, hold over after the expiration or termination of the Lease Term, Tenant shall be deemed to be occupying the Property on a month-to-month tenancy, which tenancy may be terminated as provided by the laws of the State of Washington. During such tenancy, Tenant agrees to pay to Landlord twice the rate of Base Rent as set forth herein, unless a different rate shall be agreed upon, and to be bound by all of the terms, covenants and conditions herein specified, so far as applicable.
- 23.6. **Section Titles**. The titles to sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. This Lease shall be construed and governed by the laws of the State of Washington.
- 23.7. **Binding Effect**. All of the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.
- 23.8. **Entire Agreement**. This Lease contains all covenants and agreements between Landlord and Tenant relating in any manner to the rental, use and occupancy of the Property and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.
- 23.9. **Time of Essence**. Time is of the essence with respect to each of the provisions of this Lease.
- 23.10. **Interpretation**. This Lease and each of the terms and provisions hereof are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either party.
- 23.11. **Memorandum**. This Lease shall not be recorded but the parties agree that the parties hereto shall execute in recordable form a memorandum of ground lease which shall be recorded in the recording office of Clark County for purposes of putting other parties on notice of the existence of this Lease.

- 23.12. **Estoppel Certificates.** Landlord and Tenant shall, from time to time, without additional consideration within ten (10) business days after request, execute and deliver to each other or to any person whom the requesting party may designate, an estoppel certificate consisting of statements, if true, that (a) this Lease is in full force and effect, with payment of rent and other charges hereunder being current through the date of the certificate (or stating the date through which rent and all other applicable charges hereunder have been paid); (b) this Lease has not been modified or amended (or setting forth all modifications and amendments); (c) to the best of such party's knowledge and belief (based solely upon such party's customary internal investigation undertaken with respect to similar requests, and without waiving any such default should it learn, subsequent to execution of such statement, that the other party was then in default), the other party is not then in default beyond any applicable notice, cure or grace period under this Lease; and (d) such other true factual or legal statements as Landlord, Tenant, or any lender, prospective lender, Space Tenant, investor or purchaser may request.
- 23.13. **Right of First Opportunity to Purchase Landlord's Interest.** If at any time during the Term of this Lease Landlord determines to sell Landlord's Interest, Landlord shall first offer to sell Landlord's Interest to Tenant. Landlord shall give Tenant written notice ("***Landlord's Offer Notice***") of the purchase price for Landlord's Interest and any payment terms (i.e., all cash at closing or the percentage of the purchase price to be paid in cash as a down payment and the terms for Landlord financing the balance of the purchase price, including the forms of the promissory note and security documents related to the balance of the purchase price). Tenant shall have thirty (30) days from its receipt of Landlord's Offer Notice in which to give Landlord written notice ("***Tenant's Acceptance Notice***") of Tenant's acceptance of Landlord's Offer Notice. If Tenant accepts Landlord's Offer Notice, closing shall occur in the Seattle office of such national title insurance company as chosen by Tenant at a mutually acceptable time and place no later than ninety (90) days after Landlord's receipt of Tenant's Acceptance Notice. Title shall be conveyed by bargain and sale deed free of any mortgages or other monetary liens or encumbrances on Landlord's Interest and free of any exceptions not on the title on the Commencement Date except those arising through or otherwise approved by Tenant, such approval not to be unreasonably withheld. Payment of transfer taxes and closing costs shall be divided between Landlord and Tenant in accordance with the prevailing custom in the City of Vancouver at the time of the closing. Landlord shall pay the cost of a standard coverage title insurance policy for Tenant and the title company will act as the escrow agent to close the sale; Tenant will pay the cost of extended coverage and any special endorsements requested by Tenant. Each party will bear its own attorneys' fees and any other closing costs will be charged to the party customarily responsible for such a cost on the closing date. If Tenant does not exercise its right of first opportunity as provided herein, Landlord may offer to sell Landlord's Interest to a third party on the same terms as described in its notice to Tenant (or on terms which are clearly more favorable to a seller). If Landlord has not entered into a contract to sell Landlord's Interest within twelve

(12) months after Landlord's Offer Notice to Tenant, then any further transaction shall again be subject to Tenant's right of first opportunity.

23.14. **Right of First Opportunity to Purchase Tenant's Interest.** If at any time during the Term of this Lease Tenant determines to sell Tenant's Interest, Tenant shall first offer to sell Tenant's Interest to Landlord. Tenant shall give Landlord written notice ("***Tenant's Offer Notice***") of the purchase price for Tenant's Interest and any payment terms (i.e., all cash at closing or the percentage of the purchase price to be paid in cash as a down payment and the terms for Tenant financing the balance of the purchase price, including the forms of the promissory note and security documents related to the balance of the purchase price). Landlord shall have thirty (30) days from its receipt of Tenant's Offer Notice in which to give Tenant written notice ("***Landlord's Acceptance Notice***") of Landlord's acceptance of Tenant's Offer Notice. If Landlord accepts Tenant's Offer Notice, closing shall occur in the Seattle office of such national title insurance company as chosen by Landlord at a mutually acceptable time and place no later than ninety (90) days after Tenant's receipt of Landlord's Acceptance Notice. Title shall be conveyed by Assignment of Tenant's Interest in Ground Lease and by statutory warranty deed for the Improvements free of any mortgages or other monetary liens or encumbrances on Tenant's Interest and free of any exceptions not on the title on the Commencement Date except those arising through or otherwise approved by Landlord, such approval not to be unreasonably withheld. Payment of transfer taxes and closing costs shall be divided between Landlord and Tenant in accordance with the prevailing custom in the City of Vancouver at the time of the closing. Tenant shall pay the cost of a standard coverage title insurance policy for Landlord and the title company will act as the escrow agent to close the sale; Landlord will pay the cost of extended coverage and any special endorsements requested by Landlord. Each party will bear its own attorneys' fees and any other closing costs will be charged to the party customarily responsible for such a cost on the closing date. If Landlord does not exercise its right of first opportunity as provided herein, Tenant may offer to sell Tenant's Interest to a third party for a purchase price not less than ninety-five percent (95%) of that offered to Landlord and on the same terms as described in its notice to Landlord (or on terms which are clearly more favorable to a seller). If Tenant has not entered into a contract to sell Tenant's Interest within twelve (12) months after Tenant's Offer Notice to Landlord, then any further transaction shall again be subject to Landlord's right of first opportunity. Landlord's right of first opportunity shall also apply to an arms-length sale of all or substantially all of the stock interests in Tenant to someone other than a direct or indirect shareholder or member of Tenant or an Affiliate of any direct or indirect shareholder or member of Tenant.

23.15. **Consents.** Except where this Lease indicates that a consent or approval is in the sole discretion of a party, Landlord and Tenant each agree that they will act in a commercially reasonable manner in giving or withholding any consent required under this Lease and that any dispute between Landlord and Tenant as to whether they have acted in a commercially reasonable manner in giving or withholding

any consent or approval shall be determined by arbitration in accordance with Section 20 of this Lease.

23.16. **Right to Purchase Landlord's Interest.**

- (a) Tenant may elect to purchase the Landlord's Interest: (1) effective upon the expiration of the Initial Term; (2) if the Renewal Term is applicable, at the end of the eightieth (80<sup>th</sup>) Lease Year, and (3) at the expiration of the Renewal Term (in each case the "***Option***").
- (b) Tenant shall exercise the Option by delivering to Landlord written notice of its election to exercise the Option no later than six (6) months' before expiration of the Initial Term, 80<sup>th</sup> Lease Year or the Renewal Term, as applicable (in each such case the "***Tenant's Election to Exercise Option***").
- (c) The purchase price for the Option shall be the Option Fair Market Value. Upon the due and timely exercise of the Option, Landlord and Tenant shall attempt to agree on the Option Fair Market Value. If Landlord and Tenant are unable to agree on the Option Fair Market Value within ninety (90) days after Landlord's receipt of Tenant's Election to Exercise Option, then each party shall give written notice ("***Option Price Determination Notice***") to the other within thirty (30) days thereafter setting forth its respective determination of the Option Fair Market Value which shall be based on a full appraisal report prepared in accordance with the then current standards of the Uniform Standards of Professional Appraisal Practice (or the then equivalent appraisal standards if USPAP standards are no longer published and relied upon in appraisal practice). Landlord and Tenant shall simultaneously exchange copies of the appraisal report no later than three (3) days after the issuance of the last Option Price Determination Notice. If, however, either Landlord or Tenant fails to give its Option Price Determination Notice by the deadline and fails to cure such failure within thirty (30) days after notice from the other party, then the determination set forth in the other party's Option Price Determination Notice will be the Option Fair Market Value and the remaining provisions of this Section will be disregarded. If the lower determination of the Option Fair Market Value set forth in the Option Price Determination Notices is not less than ninety five percent (95%) of the higher determination, then the parties' determinations shall be averaged and the average shall be the Option Fair Market Value. If the lower determination of the Option Fair Market Value set forth in the Option Price Determination Notices is less than ninety five percent (95%) of the higher determination, then, unless the parties agree, within seven (7) days, on one arbitrator to resolve the matter, the matter shall be submitted for decision to a panel of three (3) arbitrators. No later than fifteen (15) days following the Option Price Determination Notices, Landlord and Tenant shall each appoint one arbitrator who is a designated member in good standing of the

Appraisal Institute (or has a similar designation from any successor to the Appraisal Institute), with at least five (5) years' full-time commercial appraisal experience in the Vancouver, Washington area. The two arbitrators so appointed shall within fifteen (15) days after the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth above for qualification of the initial two arbitrators and, in addition, who is neutral and has not rendered services to either Landlord or Tenant or their respective Affiliates within the preceding five (5) year period. Failing such agreement, either Landlord or Tenant shall have the right to petition for the appointment of the third arbitrator by the Presiding Judge of the Circuit Court of Clark County. The determination of the arbitrators shall be made by majority vote of the arbitrators and shall be limited solely to the issue of whether Landlord's or Tenant's proposed Option Fair Market Value set forth in its Option Price Determination Notice is the closest to the actual Option Fair Market Value. The three arbitrators shall within thirty (30) days after the appointment of the third arbitrator reach a decision as to whether the parties shall use Landlord's or Tenant's proposed Option Fair Market Value, and shall notify Landlord and Tenant thereof in writing. The decision of a majority of the three arbitrators shall be binding upon Landlord and Tenant and not subject to appeal. Each party shall bear the cost of the arbitrator appointed by it directly and the cost of the third arbitrator shall be paid one-half by Landlord and one-half by Tenant. Each party shall be responsible for its own attorneys' and experts fees in the arbitration process. Section 20 shall not be applicable to the determination of Option Fair Market Value under this Section 23.16.

- (d) Closing on the Option shall occur: on a mutually agreed date, but no later than the last day of the Initial Term, the 80<sup>th</sup> Lease Year or Renewal Term, as applicable.
- (e) Title shall be conveyed by special warranty deed free of any mortgages or other monetary liens or encumbrances on Landlord's Interest and free of any exceptions not on the title on the Commencement Date except any non-delinquent future liens or encumbrances imposed by governmental entities and those arising through or otherwise approved by Tenant, such approval not to be unreasonably withheld. Landlord shall pay excise and transfer taxes, and closing costs shall be divided between Landlord and Tenant in accordance with the prevailing custom in the City of Vancouver at the time of the closing. Landlord shall pay the cost of a standard coverage title insurance policy for Tenant and the title company will act as the escrow agent to close the sale; Tenant will pay the cost of extended coverage and any special endorsements requested by Tenant. Each party will bear its own attorneys' fees and any other closing costs will be charged to the party customarily responsible for such a cost on the closing date.

- (f) Any dispute regarding the Option, except for those related to the determination of the Option Fair Market Value, shall be resolved by arbitration pursuant to Section 20 of this Lease. Any failure by Tenant to close on the purchase of Landlord's interest after delivering Tenant's Election to Exercise Option shall not be deemed an Event of Default.
- 23.17. **Non-merger of Estates.** If Landlord shall become the holder of a first mortgage on the leasehold estate created hereby, or if Landlord shall acquire said leasehold estate, or if Tenant, or any assignee of Tenant, shall acquire the fee simple title to the Property, or if the holder of a first mortgage on said leasehold estate acquires the fee simple title to the Property, while such first mortgage is in existence on said leasehold estate, the fee simple title to the Property and said leasehold estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either Tenant or Landlord.
- 23.18. **Attorney Fees for NDA's and Estoppels.** Any and all reasonable attorneys' and consultants' fees incurred by Landlord in response to a request by the Tenant to review any Non-Disturbance Agreements or statements acknowledging financing or estoppel statements shall be paid by the Tenant including without limitation the attorney fees and costs or "review fees" imposed by any lender of Landlord.
- 23.19. **Landlord's Limitation of Liability.** Notwithstanding any provision in the Lease to the contrary, Tenant agrees that it shall look solely to Landlord's Estate and the Land for the collection of any judgment requiring the payment of money by Landlord or for the enforcement of any other judgment or remedy against Landlord and no other assets of Landlord shall be subject to levy, execution or other procedure for the satisfaction of Tenant's remedies.
- 23.20. **Lessor's Title Paramount.** Nothing herein shall authorize Tenant to do any act that shall encumber the title of Landlord in and to the Landlord's Interest, nor shall the fee simple estate of Landlord therein be in any way subject to any claim of lien or encumbrance arising through Tenant, whether claimed by operation of law or by virtue of any express or implied contract by Tenant except as expressly provided by the Lease. Any claim to a lien upon the New Improvements arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant and Tenant's interest in any New Improvements and shall in all respects be subject to the paramount title and rights of Landlord in and to the Land.
- 23.21. **Brokerage.** Each party represents and warrants to the other that it has not incurred any brokerage or commission obligation to any third party with respect to this Lease and agrees to hold harmless and indemnify the other party for any such obligation asserted against the other party arising out of actions of the warranting party who dealt with such third party

***[Signature Pages Follow]***

IN WITNESS WHEREOF the parties hereto have executed this Lease the day and year first above written.

*“Landlord”*

**City of Vancouver,**  
a Washington municipal corporation

By: \_\_\_\_\_  
Eric Holmes, City Manager

*“Tenant”*

**[Holland]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_





**EXHIBIT A**

**LEGAL DESCRIPTION OF LAND**

\*\*\*\*\*

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block West Vancouver according to the plat thereof recorded in Volume B of Plats, Page 40, records of Clark County Washington.

\*\*\*\*\*

**[Note: Legal description is subject to confirmation.]**

**EXHIBIT B**

**GUARANTY OF COMPLETION AND PERFORMANCE**

By: **Holland Partner Group Investments, LLC,** “Guarantor”  
a Washington limited liability company

In favor of: **City of Vancouver** “Landlord”

Dated: \_\_\_\_\_, 2020

**Background**

A. Reference is made to the Ground Lease of even date hereof between Landlord, as landlord thereunder, and [Holland], a Delaware limited liability company, as Tenant thereunder (as the same may be amended, the “Ground Lease”). Capitalized terms used in this Guaranty, but not expressly defined herein or by reference to another document or source, shall have the same meanings as are respectively ascribed to those terms in the Ground Lease.

B. Tenant is governed by an Operating Agreement dated as of \_\_\_\_\_ among Tenant’s members (the “JV Agreement”).

C. Tenant has entered or will enter into that certain Construction Contract with Holland Construction, Inc., a Washington corporation (“Contractor”) relating to construction of certain new improvements (the “New Improvements”) (as the same may be amended, the “Construction Contract”).

D. In order to finance construction of the New Improvements, Tenant has entered into a Construction Loan Agreement of even date herewith between Tenant and \_\_\_\_\_ (the “Lender”) Landlord (as the same may be amended, the “Loan Agreement”).

E. Guarantor has an indirect ownership interest in Tenant.

F. As a material inducement for Landlord to enter into the Ground Lease, Guarantor has agreed to execute and deliver this Guaranty.

**Agreement**

1. Guaranty. Guarantor hereby absolutely guarantees to Landlord: (a) completion of construction of the New Improvements within the time and in the manner required by the Ground Lease and Construction Contract (“Completion”) on or before 30 months after issuance of Shoring and Excavation Permit (the “Completion Date”), but subject to delay for Force Majeure Events (as such terms are defined in the Ground Lease); (b) the full and timely payment of all costs, expenses, charges and fees necessary for the fulfillment of the requirements of such Completion, including, without limitation, all cost overruns, and all fees for permits and licenses, utility expenses, amounts payable under the Construction Contract and all subcontracts relating to the New Improvements, and amounts payable to all contractors, engineers, architects,

subcontractors and material suppliers engaged in connection with any of the foregoing; (c) the fulfillment of all obligations under any and all extensions, modifications, rearrangements, and restatements of any of the obligations, liabilities, and duties described in (a) or (b) above; and (d) without duplication of any of the amounts set forth in clauses (a) through (c) above or Section 10 below, the payment of all costs, losses, liabilities and expenses resulting from the failure of Guarantor to comply with the terms of this Guaranty (all of the payments, obligations, duties, and agreements described in this Section 1 are referred to as the “Guaranteed Obligations”).

2. Enforcement of Guaranty.

(a) Except as otherwise expressly contemplated in this Guaranty, within five (5) business days after occurrence and during the continuance of an Event of Default by TENANT under the Ground Lease (as defined in the Ground Lease), Guarantor shall, at its sole cost and expense, pay or perform any such Guaranteed Obligations then due, including, without limitation, assuming construction of the New Improvements and diligently pursuing such construction to complete the New Improvements within the time and manner required in the Ground Lease and Construction Contract. Guarantor shall pay all costs and expenses in connection with such construction and shall indemnify and hold Landlord harmless from any and all losses, costs, liabilities, or expenses incurred in connection with such Completion of the New Improvements.

In the event Lender fails to make advances contemplated under the Loan Agreement and/or Tenant’s members fail to make equity contributions contemplated under the JV Agreement, through no fault of Guarantor or any affiliate of Guarantor, and Tenant ceases work on the New Improvements (each, a “Debt and Equity Default”), Guarantor shall have two hundred seventy (270) days after the Debt and Equity Default to obtain replacement debt financing or equity investment (as applicable) on commercially reasonable terms, and to recommence work on the New Improvements (each, a “Debt and Equity Cure”). Guarantor shall use all due diligence and commercially reasonable efforts to affect the Debt and Equity Cure. Guarantor shall provide Landlord monthly status reports of its efforts to affect the Debt and Equity Cure.

If Guarantor fails to affect a Debt and Equity Cure within two hundred seventy (270) days after the Debt and Equity Default (the “Initial Cure Period”), then Guarantor shall provide written notice of such failure to Landlord. Guarantor shall continue to use all due diligence and commercially reasonable efforts to continue to affect a Debt and Equity Cure, and Tenant, Guarantor, and Landlord shall have monthly briefings in which Tenant and Guarantor shall present detailed written evidence of their efforts to affect a Debt and Equity Cure, until Guarantor affects a Debt and Equity Cure (the “Extended Cure Period”). The Extended Cure Period shall expire forty-five (45) days after a Debt and Equity Cure could have been affected and was not affected (“Cure Period Expiration”) or be terminated ten (10) days after Guarantor’s receipt of written notice from the Landlord terminating the Extended Cure Period due to Landlord’s commercially reasonable insecurity that a Debt and Equity Cure will not be affected (“Cure Period Termination”). Any provision of this Guaranty to the contrary notwithstanding, Guarantor’s obligations under Sections 1 and 2(b) of this Guaranty shall not be effective until after the Cure Period Expiration. Furthermore, the Ground Lease shall provide as follows:

(1) So long as Tenant pays rent as and when due and otherwise performs its obligations under the Ground Lease, other than the timely completion of construction of the New Improvements, the Landlord shall forbear exercising its remedies, including without limitation termination of the Ground Lease, until after the Cure Period Expiration; and

(2) Contemporaneously with a Cure Period Termination, Guarantor's obligations under Sections 1 and 2(b) of this Guaranty shall terminate, and Landlord may elect either: (1) to terminate the Ground Lease and take title to the Premises and New Improvements, or (2) require Guarantor to purchase the Premises for the amount of Three Million Three Hundred Thousand Dollars (\$3,300,000); provided that Guarantor may designate an affiliate to complete such purchase.

(b) If Guarantor fails upon Landlord's request as and when required under this Guaranty to commence and thereafter diligently and continuously pursue Completion (but subject to Sections 1(a) and 1(b) above and a Debt and Equity Default), or if Guarantor fails to achieve Completion on or before the Completion Date, except in the case of a Debt and Equity Default, then Landlord shall have the right ("Landlord's Completion Right") (but not the obligation) in its sole and absolute discretion to complete the New Improvements itself or to cause a third party to complete the construction of the New Improvements. Guarantor shall pay to Landlord, immediately upon written demand, an amount equal to the difference between the actual costs incurred by Landlord in so completing the New Improvements and that are directly related to the construction of the New Improvements, including, without limitation, all licensing fees, permitting fees, amounts payable under any general construction contract and all subcontracts, and amounts payable to any architect, engineer or other consultant engaged in connection with the construction of the New Improvements (the "Actual Costs").

If any construction lien arising from or in connection with the construction of the New Improvements encumbers the Property, then Guarantor agrees, at its sole cost and expense, to immediately cause the removal of such construction liens. Such obligation shall be separate and apart from Tenant's obligation to post the Letter of Credit (as defined in the Lease), it being understood that the proceeds of such Letter of Credit are intended by Tenant and Guarantor to be used for purposes other than to pay for the removal any such construction liens.

3. Waivers. Guarantor waives any right to require that (i) any action be brought against Tenant or any other Person, (ii) Landlord enforce its rights against any other guarantor of the Guaranteed Obligations, (iii) Landlord have Tenant joined with Guarantor or any other guarantor of all or part of the Guaranteed Obligations, or (iv) Landlord pursue any other remedy in Landlord's powers whatsoever. Landlord shall not be required to mitigate damages or take any action to reduce, collect or enforce the Guaranteed Obligations. Guarantor waives any defense arising by reason of any disability, lack of corporate, limited liability company, and/or partnership authority or power, or other defense of Tenant, or of any other guarantor of the Guaranteed Obligations, and shall remain liable hereon regardless of whether Tenant or any other guarantor be found not liable thereon for any reason. Should Landlord seek to enforce the obligations of Guarantor by action in any court, Guarantor waives any necessity, substantive or procedural, that a judgment previously be rendered against Tenant or any other Person or that

Tenant or any other Person be joined in such cause or that a separate action be brought against Tenant or any other Person.

GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES: (i) presentment, demand, protest, notice or acceptance, notice of dishonor, notice of nonperformance, notice of acceleration, notice of intent to accelerate and any other notice with respect to any of the Guaranteed Obligations and this Guaranty, and promptness in commencing suit against any party thereto or liable thereon, and/or in giving any notice to or making any claim or demand hereunder upon Guarantor, (ii) any right to require Landlord to (A) proceed against Tenant or any other guarantor, (B) proceed against or exhaust any security held by Landlord, or (C) pursue any remedy in Landlord's power whatsoever; (iii) any defense arising by reason of any incapacity, lack of authority, death or disability or other defense of Tenant or any other party or by reason of the cessation from any cause whatsoever of the liability of Tenant or any other party; (iii) all rights and defenses arising out of an election of remedies by Landlord; (iv) any defense based upon any lack of diligence by Landlord in the collection of the Guaranteed Obligations; (v) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (vi) any defense based upon any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have.

4. No Termination, Modification, or Impairment. Guarantor hereby consents and agrees to each of the following, and agrees that the Guaranteed Obligations shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any rights (including without limitation rights to notice) that Guarantor might otherwise have as a result of or in connection with any of the following, in each case to the fullest extent permitted by law:

(a) any amendment of the Ground Lease, the Construction Contract, the Loan Agreement or the JV Agreement;

(b) the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution, death, or lack of power of Tenant;

(c) the failure of Landlord or any other Person to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such Collateral, property or security; or

(d) any payment by Tenant to Landlord is held to constitute a preference under the bankruptcy laws, or for any reason Landlord is required to refund such payment or pay such amount to Tenant or someone else.

5. Representations and Warranties. Guarantor represents and warrants that: (a) Guarantor has the power and authority to execute, deliver and perform its obligations under this

Guaranty, (b) the execution, delivery and performance by Guarantor of this Guaranty do not violate or conflict with any applicable laws, and do not violate or conflict with, breach, or constitute a default under, or require consent under any agreement or document binding or covering Guarantor or any of its property and (c) this Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

6. Release. Upon Completion, Guarantor will be released from its obligations under this Guaranty and, at Guarantor's request, Landlord shall confirm in writing to Guarantor that all obligations of Guarantor under this Guaranty have been fulfilled, and that this Guaranty is of no further force or effect.

7. Litigation Costs. In the event Landlord brings an action to enforce this Guaranty, or in the event of a bankruptcy or insolvency proceeding involving Guarantor, Guarantor will reimburse Landlord for all expenses incurred by Landlord, including, but not limited to, attorneys' fees and costs (for in-house and outside counsel).

8. Successors and Assigns. This Guaranty shall be binding upon Guarantor, its administrators, successors and assigns, and shall inure to the benefit of and may be enforced by Landlord and its successors and assigns.

9. Events of Default. Guarantor shall be in default under this Guaranty upon the occurrence of any or all of the following events, circumstances or conditions (each of which shall be referred to herein as an "Event of Default"):

(a) Default in the timely payment or performance of any or all of the obligations imposed under, or any or all of the covenants, warranties and liabilities contained or referred to in, this Guaranty; or

(b) Any warranty, representation or statement made or furnished to Landlord by or on behalf of Guarantor (i) in connection with, or under the terms of, this Guaranty, or (ii) to induce Landlord to enter into the Ground Lease, proves to have been false in any material respect when made or furnished; or

(c) Insolvency, business failure, appointment of a receiver of any part of the property of, assignments for the benefit of creditors by, or the commencement of any proceeding under any state or federal bankruptcy or insolvency laws by or against, any Guarantor and, in the case of an involuntary proceeding under any federal or state bankruptcy law, if such proceeding shall not be dismissed within ninety (90) days after commencement thereof. Notwithstanding the foregoing, the events in this clause (c) shall not constitute an Event of Default if a replacement guarantor acceptable to Landlord in its reasonable discretion (meeting the Minimum Financial Requirement and having a direct or indirect ownership interest in Tenant) shall provide a replacement Limited Guaranty in substantially the form executed at Closing and a replacement Guaranty of Completion and Performance in substantially the form hereof; or

(d) Upon the entry of any monetary judgment or the assessment and/or filing of any tax lien against any Guarantor, or upon the issuance of any writ of garnishment or attachment against any property of, debts due to, or rights of any Guarantor, if such event would materially adversely affect Guarantor's ability to perform hereunder, unless in any such event

such judgment, assessment, lien, garnishment or attachment is discharged or bonded within sixty (60) days.

10. Remedies; Continuance of Event of Default.

(a) Guarantor acknowledges that upon the occurrence of an Event of Default, Landlord shall have the right to enforce the Guaranteed Obligations by pursuing any and all rights and remedies available to Landlord against Guarantor, whether such rights and remedies are available at law or in equity.

(b) Notwithstanding anything to the contrary contained in this Guaranty, if an Event of Default has occurred (i) it shall be deemed to continue unless and until Landlord in its sole and absolute discretion in writing has waived the Event of Default, and (ii) unless Landlord in its sole and absolute discretion has agreed in writing to permit Guarantor to do so, neither Guarantor nor any other Person shall have any right to cure such Event of Default. If Landlord waives an Event of Default in writing or accepts in writing a cure by Guarantor of an Event of Default, following such written waiver or cure, such Event of Default shall cease to exist and shall no longer continue.

11. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth on page one.. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by email, in which case notice shall be deemed delivered upon transmission, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by facsimile or personal delivery and delivered after 5:00 p.m. local time where the Property is located shall be deemed received on the next business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to Landlord shall be deemed given by Tenant, notices given by counsel to Tenant or Guarantor shall be deemed given by Landlord, and notices given to a party's counsel shall be deemed given to the party.

If to Guarantor:

Holland Partner Group Investments, LLC  
c/o Holland Partner Group  
1111 Main Street, Suite 700  
Vancouver, WA 98660  
Attn: Clyde Holland  
E-mail: [clyde@hollandpartnergroup.com](mailto:clyde@hollandpartnergroup.com)

and a copy to:

c/o Holland Partner Group  
1211 Daniels Street, #61708  
Vancouver, WA 98660  
Attention: Principal Staff Officer / Notices



Email: [notices@hollandpartnergroup.com](mailto:notices@hollandpartnergroup.com)

With a copy to:

Oregon Law Group, P.C.  
1675 SW Marlow Avenue, Suite 404  
Portland, OR 97225  
Attn: Joel Kaplan  
E-mail: [notices@oregonlawgroup.com](mailto:notices@oregonlawgroup.com)

If to Landlord:

City of Vancouver  
415 West 6th Street  
Vancouver, WA 98660  
Attn: \_\_\_\_\_

and a Copy to:

City of Vancouver  
415 West 6th Street  
Vancouver, WA 98660  
Attn: City Attorney

With a copy to:

Houlihan Law PC  
303 E. 16th Street, Suite 201  
Vancouver, WA  
Attn: John Houlihan  
[John@houlihan-law.com](mailto:John@houlihan-law.com)  
[jt@houlihan-law.com](mailto:jt@houlihan-law.com)

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of Washington, without regard to the conflict of law rules of the State of Washington or any other jurisdiction. Guarantor hereby agrees that all actions or proceedings arising directly, indirectly or otherwise in connection with, out of or related to or from this Guaranty, or for recognition or enforcement of any judgment arising from same, shall be litigated, in Landlord's sole discretion and at Landlord's sole election, only in courts having a situs within or whose jurisdiction includes Clark County, Washington. Accordingly, Guarantor hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such action or proceeding in any court selected by Landlord. Guarantor also hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which Guarantor may now or hereafter have to the venue of any suit, action or proceeding in any court selected by Landlord. Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

13. Amendments. No amendment or waiver of any provisions of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by Landlord, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or

demand on Guarantor shall in any case entitle it to any other or further notice or demand in similar or other circumstances.

14. No Oral Agreements. This Guaranty represents the final agreement between the parties in connection with the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements by the parties. There are no unwritten oral agreements with the parties.

15. Financial Representations, Warranties and Covenants. Guarantor hereby represents, warrants and covenants that:

(a) All financial statements and data that have been given to Landlord by Guarantor and Tenant with respect to Guarantor (A) are complete and correct in all material respects as of the date given; (B) accurately present in all material respects the financial condition of Guarantor on each date as of which the same have been furnished; and (C) have been prepared in accordance with the method of presentation provided by Guarantor's Statement of Net Worth and Liquidity document previously provided to Landlord.

(b) There has been no adverse change in the financial condition of Guarantor since (A) the date of the most recent financial statements given to Landlord with respect to Guarantor, or (B) the date of the financial statements given to Landlord immediately prior to the date hereof, other than changes in the ordinary course of business, none of which changes has been materially adverse, individually or in the aggregate.

(c) For so long as this Guaranty remain outstanding, (i) Guarantor, collectively, shall maintain a net worth of not less than Fifteen Million and 00/100 Dollars (\$15,000,000) and (ii) maintain liquidity (unencumbered cash) of not less than Five Million and 00/100 Dollars (\$5,000,000) ((i) and (ii) are collectively called, the "Minimum Financial Requirement"). An Appropriate Officer of Guarantor shall certify compliance with such Minimum Financial Requirement on a quarterly and annual basis.

16. Time. Time is of the essence of this Guaranty and all of its provisions.

17. Entire Agreement. This Guaranty is intended as a final expression of this agreement of guarantee and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between Guarantor and Landlord, no usage of the trade, and no parol or extrinsic evidence of any nature, shall be used or be relevant to supplement, explain, contradict or modify the terms and/or provisions of this Guaranty.

18. Severability. If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, such invalidity, voidness or unenforceability shall not impair, diminish, void, invalidate or affect in any way any other terms, provisions, covenants and conditions hereof or any applications thereof, all of which shall continue in full force and effect.

19. Headings. Section headings in this Guaranty are included for convenience of reference only and do not constitute a part of this Guaranty for any other purpose.

20. Counterparts. This Guaranty may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of such counterparts taken together shall constitute but one and the same instrument.

21. GUARANTOR ACKNOWLEDGEMENT AND WAIVER OF RIGHT TO TRIAL BY JURY. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, GUARANTOR HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS GUARANTY.

*[Signature Appears on Following Page]*

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Guaranty as of the date first above written.

**GUARANTOR:**

**HOLLAND PARTNER GROUP INVESTMENTS, LLC,**  
a Washington limited liability company

By: Holland Partner Group Management, Inc.,  
a Delaware corporation,  
its Manager

By: \_\_\_\_\_  
Clyde P. Holland, Jr.,  
Chairman and CEO