

**BLOCK 10 VANCOUVER, WASHINGTON**

**LAND DISPOSITION AND DEVELOPMENT AGREEMENT**

**AMONG**

**THE CITY OF VANCOUVER, a Washington municipal corporation,**

**AS GROUND LESSOR**

**AND**

**HOLLAND ACQUISITION CO., LLC a Washington limited liability company**

**AS GROUND LESSEE**

**As of OCTOBER \_\_, 2019**

**LAND DISPOSITION AND DEVELOPMENT AGREEMENT  
(BLOCK 10 VANCOUVER, WASHINGTON)**

THIS LAND DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made as of October \_\_\_\_\_, 2019 (the "Effective Date"), by and between the CITY OF VANCOUVER, a Washington municipal corporation ("City"), and HOLLAND ACQUISITION CO., LLC a Washington limited liability company ("Lessee" or "Holland").

**RECITALS**

**WHEREAS**, City owns the real property commonly referred to as Block 10 bounded by Washington, Columbia, West 8<sup>th</sup> and West 9<sup>th</sup> Streets in the City of Vancouver, Washington, and legally described on Exhibit A attached hereto (the "Property");

**WHEREAS**, City declared the Property surplus by Resolution No. M-3991, dated February 22, 2016;

**WHEREAS**, Holland submitted to the City a Letter of Intent for Ground Lease of Block 10 dated September 18, 2019 ("LOI") which outlines Holland's proposal to ground lease the Property and construct a mixed-use building on the Property consisting a four-story office tower and a five-story residential tower over a common two-story podium containing structured parking and retail on the ground floor;

**WHEREAS**, the City executed the LOI on October 3, 2019;

**WHEREAS**, Lessee shall cause the Holland Partners Group to relocate its Corporate Headquarters to the office tower upon completion which is expected to occupy 40,000 square feet of the office space on an initial base lease term no less than 10 years;

**WHEREAS**, Lessee intends to apply for the Multi-Family Housing Tax Exemption ("MFTE") Program, which is authorized under state law (RCW 84.14) and codified in Chapter 3.22 of the Vancouver Municipal Code;

**WHEREAS**, the Parties desire to cause the construction and development of the Property including the construction of a mixed-use building, landscaping and other site and adjacent right of way improvements all in accordance with and subject to this Agreement;

**WHEREAS**, the parties acknowledge and agree that the City would not lease the Property to Holland without the development terms, conditions and obligations set forth in this Agreement.

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

**ARTICLE 1. DEFINITIONS AND EXHIBITS**

**Section 1.1 Definitions.**

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Agreement" means this Disposition and Development Agreement, including the attached Exhibits and all subsequent operating memoranda and amendments to this Agreement.

(b) **"Business Days"** mean any day other than Saturday, Sunday or a holiday in which banks are not open in the state of Washington.

(c) **"Certificate of Occupancy"** means the final certificate of occupancy issued by the City, or comparable City sign-off, on the completion of construction of the Improvements.

(d) **"City"** means the City of Vancouver, Washington, a municipal corporation.

(e) **"Closing Date"** means the date of recording of the ground lease or memorandum of ground lease but in no event later than December 31, 2019.

(f) **"Construction Plans"** means all construction documentation upon which Lessee, and Lessee's contractors, shall rely in building the Improvements and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings") and a time schedule for construction.

(g) **"Corporate Headquarters"** means the headquarters of Holland Partners Group which is located presently at 1111 Main Street, Suite 700, Vancouver, WA 98660.

(h) **"Development"** means the Property and the Improvements.

(i) **"Effective Date"** has the meaning set forth in the first sentence of this Agreement.

(j) **"Escrow"** means the escrow established with the Title Company for the purpose of conveying a ground lease for the Property from the City to Lessee.

(k) **"Hazardous Materials"** 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 Materials 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 Hazardous Materials 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.

(l) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances, regulations, orders and directives governing hazardous waste, hazardous substances, discharges of pollutants to soil or groundwater, wastewater discharges, drinking water, air emissions, Hazardous Materials releases or reporting requirements, Hazardous Materials use, storage or disposal, and employee or community right-to-know requirements related to the work being performed under this Agreement.

(m) **"Improvements"** means the planned re-development of the Property with a multi-story, mixed-use building, landscaping and related improvements that comply with the City of Vancouver Municipal Code, in general reflect the design drawings attached at Exhibit C and meets 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 9th Street and 8<sup>th</sup> Street; (v) 10,000 square feet of ground floor retail or restaurant as identified on Exhibit C 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) locating all overhead utilities on the rights-of-way abutting the Property underground; and (ix) achieves, at a minimum, one of the following design standards: (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 City. The Improvements will be reduced in size pursuant to Section 4.2 in the event of an Overhang Redesign.

(n) "Lessee" means Holland Acquisition Co., LLC a Washington limited liability company, and its permitted successor and assigns

(o) "Parties" means the City and Lessee.

(p) "Property" has the meaning set forth in the Recitals.

(q) "Schedule of Performance" means the summary projected schedule of actions to be taken by the Parties pursuant to this Agreement to achieve disposition of the Property to Lessee and the development of the Improvements on the Property. The Schedule of Performance is attached to this Agreement as Exhibit B. The Schedule of Performance is subject to force majeure and sidewalk Overhang Redesign delays.

(r) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until Closing unless earlier terminated pursuant to the terms hereof.

(s) "Title Company" means the Seattle, Washington office of Fidelity National Title, 600 University Street, Ste. 2424, Seattle, WA 98101, unless modified pursuant to Section 3.3.

#### Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

- Exhibit A: Legal Description
- Exhibit B: Schedule of Performance
- Exhibit C: Design Renderings
- Exhibit D: Letter of Intent
- Exhibit E: Form Completion and Performance Guaranty
- Exhibit F: Form of Payment Guaranty

## ARTICLE 2. PREDISPOSITION REQUIREMENTS

Section 2.1 Conditions Precedent to City's Obligation to Ground Lease the Property. The requirements set forth in this Section 2.1 are conditions precedent to the City's obligation to execute and close on the Ground Lease:

- (a) Escrow Deposit. Lessee shall have deposited the Deposit in Escrow pursuant to Section 3.2(a);
- (b) Initial Ground Lease Rent. Lessee shall have deposited the initial rent payment pursuant to the Ground Lease;
- (c) Pre-Application Conference. Lessee shall have held a pre-application conference with the City to discuss the Improvements to be developed on the Property;
- (d) Preliminary Design Plans. Lessee shall have timely delivered to and the City shall have approved the conceptual design plans pursuant to Section 4.1(b) below;
- (e) No Default. Lessee shall not be in default of its obligations under this Agreement beyond any applicable cure period;
- (f) City Council Approval of Ground Lease. The City Council shall have duly reviewed and approved the form of Ground Lease negotiated by the parties pursuant to this Agreement;
- (g) Representations and Warranties. All representations and warranties of Lessee contained in any part of this Agreement shall be true and correct in all material respects.
- (h) Closing Documents. Lessee shall have delivered to escrow duly executed copies of the following documents:
  - (i) Ground Lease;
  - (ii) Memorandum of Ground Lease in recordable form;
  - (iii) Completion and Performance Guaranty substantially in the form attached at Exhibit E hereto;
  - (iv) Such affidavits and other documents as the Title Company may reasonably request to issue a leasehold policy of title insurance; and
  - (v) Such other documents as may be reasonably required to effectuate the Closing of the Ground Lease.

Section 2.2 Conditions Precedent to Lessee's Obligation to Ground Lease the Property. The requirements set forth in this Section 2.2 are conditions precedent to Lessee's obligation to execute and close on the Ground Lease:

- (a) No Default. Lessor shall not be in default of its obligations under this Agreement beyond any applicable cure period;
- (b) City Council Approval of Ground Lease. The City Council shall have duly reviewed and approved the form of Ground Lease negotiated by the parties pursuant to this Agreement;
- (c) Drive Thru Teller. The City shall have provided the Drive Thru Teller notice pursuant to Section 2.6;

(d) Closing Documents. Lessor shall have delivered to escrow duly executed copies of the following documents:

(i) Ground Lease;

(ii) Memorandum of Ground Lease in recordable form;

(iii) Such affidavits and other documents as the Title company may reasonably request to issue a leasehold policy of title insurance;

(iv) Such other documents as may be reasonably required to effectuate the Closing of the Ground Lease; and

(e) Title Insurance. Title Company shall be irrevocably committed to issue the leasehold Title Policy to Lessee for insuring the cost of the Improvements showing title to the Property vested in the City subject only to the Permitted Exceptions (as defined in Section 3.6 below) and the documents to be recorded under this Agreement.

(f) Representations and Warranties. All representations and warranties of the City contained in any part of this Agreement shall be true and correct in all material respects.

#### Section 2.3 Payment Guaranty.

Concurrent with execution of this Agreement, Lessee shall deliver to the City a duly executed original of the Payment Guaranty in the form attached hereto at Exhibit F. Failure to timely deliver the Payment Guaranty shall be a material default of this Agreement.

#### Section 2.4 Ground Lease Negotiations

(g) Ground Lease Negotiations and Termination Right: The Parties shall undertake good faith negotiations on the terms and conditions of a Ground Lease for the Property. The Ground Lease shall incorporate the material terms and conditions outlined in the LOI attached at Exhibit D, the additional terms and conditions outlined in Article 4 below and such other customary and commercially reasonable terms the parties may agree upon to effectuate the terms and conditions of this Agreement, the LOI and the redevelopment of the Property. If the parties are unable to reach agreement on a mutually acceptable ground lease within thirty (30) days of the Effective Date, then either party may terminate this Agreement upon written notice to the other party, the Deposit shall be promptly disbursed to Lessee as Lessee's sole and exclusive remedy, and thereafter neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. The Parties may extend the thirty (30) day negotiation period upon written agreement executed by both Parties.

(h) City Council Review and Approval of Ground Lease. If the Parties timely reach a mutually agreeable form of Ground Lease, then the City shall as soon as practicable present such Ground Lease for review, consideration and approval by the City Council. Nothing herein shall be deemed or construed to require the City Council to approve the form of Ground Lease presented. If the Vancouver City Council does not approve the Ground Lease by Closing, then this Agreement shall terminate, the Deposit shall be returned to Lessee as Lessee's sole and exclusive remedy, and thereafter neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

**Section 2.5 Lessee Due Diligence Contingency.**

(a) **City Due Diligence Materials.** Within five (5) days after the Effective Date, City shall make available for inspection to Lessee documents relating to the Property only to the extent such items are in City's possession or control (collectively the "Due Diligence Materials").

(b) **Lessee Due Diligence Contingency.** Lessee shall have a period (the "Due Diligence Period") commencing on the Effective Date and continuing until the date that is sixty (60) days following the Effective Date, (the "Due Diligence Expiration Date") to examine any and all aspects of the Property, including without limitation grading, settling, soil composition and condition, drainage, hydrology, existence of Hazardous Materials (if any), structural aspects, easements, rights of way, feasibility, building and other permits, approvals, laws and restrictions, land use and other governmental conditions and restrictions, likelihood of condemnation, zoning matters, traffic and flight patterns, demographics, title matters, matters disclosed by a survey of the Property if Lessee should obtain such a survey and/or desire an ALTA policy of title insurance, contracts that will survive Closing (if any), income and expenses of the Property and each portion thereof (if any), matters that would be disclosed by investigations of the types contemplated by this Section 2.2, and all other matters related to the suitability of the Property for Lessee's intended purposes, use and investment. All square footages, dimensions and sizes (if any) in any materials furnished or made available by City are approximate. Lessee has been urged to independently verify all such information. Lessee has also been urged to conduct its own investigations regarding any impact the zoning of the Property and development regulations may have on Lessee's intended use of the Property. Lessee may perform invasive inspections, borings, sampling and testing of soils, water air or other materials by (x) submitting to City the scope and specifications for such testing; and (y) obtaining the prior written consent of the City for such testing.

(c) **Access.** Lessee may enter the Property to conduct its due diligence. Lessee shall be solely responsible for all costs of inspections and shall restore the Property to the same condition it was in prior to inspection. Lessee agrees to indemnify and defend City from all liens, costs, claims and expenses, including attorneys' fees and experts' fees, arising from or relating to entry onto or inspection of the Property by Lessee, its agents and representatives. This agreement to indemnify and defend City shall survive Closing or termination of this Agreement.

**Section 2.6 Notice of Removal of Drive-Thru Teller Permit.**

On or before Closing, the City shall have provided the permit holder (the "Bank") for the bank drive-thru teller located in the West 9<sup>th</sup> Street right-of-way between Columbia and Washington Streets a notice of termination and removal of such structures with a compliance date no later than 30 days prior to estimated commencement of construction of the podium.

**ARTICLE 3.  
DISPOSITION OF PROPERTY**

**Section 3.1 Ground Lease.**

Provided the pre-disposition requirements set forth in Article 2 have all been satisfied or waived and the additional closing conditions set forth in Section 3.5 have been satisfied or waived, the City shall ground lease to Lessee, and the Lessee shall ground lease from the City, the Property pursuant to the Ground Lease.

**Section 3.2 Opening Escrow.**

(a) Not later than three (3) days of the Effective Date of this Agreement Lessee shall deposit with Escrow the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) ("Deposit") in good funds, by federal wire transfer. If Lessee fails to timely deposit the Deposit, Seller shall have the right, as its sole remedy therefor, to terminate this Agreement by giving Lessee written notice.

(b) Upon the expiration of the Due Diligence Period in Section 2.2(a), unless Lessee shall have terminated this Agreement, the Deposit shall be fully earned by the City and shall be non-refundable to Lessee except in the event of a default by City as provided in Section 7.3 below, the failure of a condition precedent for the benefit of Lessee described in Sections 2.2 or 3.3, or as otherwise expressly set forth in this Agreement. If Lessee elects to terminate this Agreement prior to the Due Diligence Expiration Date or the Entitlement Expiration Date the Deposit shall be immediately refunded to Lessee and the parties shall owe each other no obligations except for those that survive the termination of this Agreement.

(c) Escrow Agent shall hold the Deposit in an interest-bearing account in accordance with the terms and conditions of this Agreement. All interest accruing on such sums shall become a part of the Deposit and shall be distributed as part of the Deposit to the party entitled to such distribution in accordance with the terms of this Agreement. Notwithstanding any provision of this Agreement to the contrary, in no event shall either party have any responsibility or liability to the other in connection with the accrual or payment of interest on any portion of the Deposit.

(d) At Closing the Deposit shall be disbursed to the City and held by the City as a security deposit under the Ground Lease and shall thereafter be governed by the terms and conditions of the Ground Lease.

**Section 3.3 Title and Survey.**

(a) **Title Examination.** Within ten (10) days after the Effective Date, City shall deliver or cause to be delivered to Lessee a preliminary leasehold report for the Property (the "Title Commitment") from Title Company, and, to the extent available, a legible copy of each document referenced in the Title Commitment as an exception to title (each, an "Exception"). Lessee may, at its cost, obtain an ALTA survey of the Property ("Survey") within twenty (20) days after the Effective Date.

(b) **Approval.** No later than thirty (30) days following Lessee's receipt of the Title Commitment (the "Title Exam Deadline"), Lessee shall notify City in writing of Lessee's objections to any matters shown in the Title Commitment and stating Lessee's objections to such matters. Any item(s) contained in the Title Commitment to which Lessee does not timely object prior to the Title Exam Deadline, shall be automatically and irrevocably be deemed a Permitted Exception unless such item constitutes a Must Remove Exception (as defined in Section 3.3(c)(ii) below).

(c) **Title Update: Title Objections: Cure of Title Objections.**

(i) In the event, following the Title Exam Deadline, the Title Commitment is revised (each, a "Title Update") to disclose an Exception that was not on the Title Commitment or any earlier Title Update, or if The Title Company reduces coverage in any way or refuses to issue any endorsement (each, a "New Exception"), Lessee shall have until the date (the "Updated Title Exam Deadline") which is five (5) business days after Lessee's receipt of such Title Update, to notify City in writing that Lessee objects to any matters shown in the Title Update and stating Lessee's objections to such matters. Any item(s) contained in a Title Update to which Lessee does



not timely object prior to the applicable Updated Title Exam Deadline shall be automatically and irrevocably deemed a Permitted Exception unless such item constitutes a Must Remove Exception.

(ii) City agrees that any of the following shown on the Title Commitment or any Title Update shall not constitute Permitted Exceptions and shall be cured or removed by City on or prior to Closing regardless of whether objected to by Lessee as provided in Section 3.3(b) or 3.3(c)(i): (A) any judgment liens against City for a defined and ascertainable amount, (B) any mechanics liens for a defined and ascertainable amount for work performed requested by or on behalf of the City, and (C) any Exception created voluntarily by City after the effective date of the Title Commitment, unless Lessee has approved of such Exception (collectively, the "Must Remove Exceptions").

(iii) In the event Lessee shall timely notify City of objections to Exceptions shown in the Title Commitment, Survey or a Title Update prior to the applicable Title Exam Deadline or Updated Title Exam Deadline and in accordance with Section 3.3(b) or 3.3(c)(i), City shall have the right, but not the obligation, to cure such objections. Within five (5) days after receipt of the applicable Lessee's notice of objections (whether to the Title Commitment, Survey or any Title Update), City shall notify Lessee in writing whether City elects to attempt to cure any or all of such objections (the "City's Cure Notice"). If City elects to attempt to cure, and provided that Lessee shall not have terminated or be deemed to have terminated this Agreement in accordance with Sections 2.2(a) or (b) hereof, City shall have until the Closing Date to attempt to remove, satisfy or cure the same. Any Title Exception objected to by Lessee shall be deemed cured if it is removed as an exception in the Title Policy (including, through the posting of a bond) or if Title Company issues an endorsement insuring over such exception in a form reasonably acceptable to Lessee, which benefits not only Lessee but its successor and assigns who acquire an interest in the Property.

(iv) If City elects not to cure any matters properly objected to by Lessee in accordance with Section 3.3(b) or 3.3(c)(i) above, or if City is unable to effect a cure of those objections which it elected to cure prior to the Closing and so notifies Lessee in writing, or if City fails to respond to Lessee's notice within said five (5) day period (which shall be deemed City's election to not cure), Lessee shall have the following options to be exercised by Lessee in strict accordance with Section 3.3(c)(v) below: (A) to ground lease the Property subject to the those uncured objections; or (B) to terminate this Agreement by sending written notice thereof to City, and upon delivery of such notice of termination, this Agreement shall terminate and the Deposit shall be returned to Lessee as Lessee's sole and exclusive remedy, and thereafter neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

(v) Lessee shall, within three (3) Business Days after receipt of City's Cure Notice (or if no notice is given, within three (3) Business Days after expiration of the five (5) day period for Seller to provide the Seller's Cure Notice) notify City in writing whether Lessee shall elect to accept the conveyance under clause (A) or to terminate this Agreement under clause (B) of Section 3.3(c)(iv) above. Lessee's failure to notify City of termination of this Agreement within such three (3) business day period shall be deemed to be an election under clause (A) of Section 3.3(d)(iv) above.

(e) **Title Policy.** City agrees to execute an owner's affidavit ("Title Affidavit") in such form as the Title Company shall require for the issuance of the Title Policy. At Closing, the Title Company shall issue to Lessee at Closing a Leasehold Policy of Title Insurance ("Title Policy"), and if requested by or binding commitment to issue the Title Policy, provided that City shall not be required to cure any title exceptions or incur any liability in connection with the issuance of such policy (other than in connection

with the execution of the Title Affidavit as set forth above) unless expressly required hereunder or unless Seller elects under this Section 3.3. Furthermore, Lessee's request for extended coverage and/or endorsement shall not in way be a condition to or cause a delay in Closing, unless such endorsement is due to a cure elected by City under Section 3.3(c)(iii).

**Section 3.4 Covenants of City Prior to Closing.** During the period from the Effective Date until the earlier of (a) the Closing or (b) the termination of this Agreement, City shall, in addition to the covenants set forth elsewhere in this Agreement:

- (a) Maintain existing insurance coverage for the Property;
- (b) Not permit or suffer to exist any encumbrance, charge or lien to be placed or claimed upon the Property unless such encumbrance, charge or lien has been approved in writing by Lessee, or unless such encumbrance, charge or lien will be removed by City prior to the Closing;
- (c) Cause all Leases and tenancies of any portion of the Property to be terminated as of the Closing Date except for that Construction Parking Bulk Lease between the City and NASH-Holland Washington & Sixth, LLC with an effective Date of May 1, 2019;
- (d) Not enter into any new contracts or leases affecting the Property which extend past the Closing Date or amend any current contracts or leases affecting the Property, without the prior written consent of Lessee, which consent may be withheld in Lessee's sole discretion;
- (e) Maintain the Property and keep the Property in substantially the same condition on the Closing Date as on the Effective Date normal wear and tear and casualty or condemnation excepted;
- (f) Not sell, mortgage, pledge, hypothecate or otherwise transfer or dispose of all or any part of the Property or any interest therein (except in the ordinary course of business);
- (g) Comply with all laws applicable to the Property, or the use or occupancy thereof, or any operations or activities therein or thereon;
- (h) Comply with all existing permits, licenses and approvals required for the use and occupancy of, and all operations activities on, the Property, and keep all such permits, licenses and approvals in full force and effect; and
- (i) Not take any other action which would violate any laws applicable to the Property, or which would have an adverse effect upon the Property, or upon Lessee after Closing.

**Section 3.5 Closing.**

The Closing Date shall occur within thirty (30) days following the date on which all conditions precedent to conveyance set forth in Article 2 have been satisfied or waived, but in no event later than December 31, 2019 subject to satisfaction or waiver of the conditions in Article 2.

**Section 3.6 Condition of Title.**

On the Closing Date, City shall deliver possession of the Property to Lessee subject only to the Exceptions which are listed below in this Section 3.6 (the "Permitted Exceptions"):

- (a) applicable building and zoning laws and regulations;

- (b) the provisions of this Agreement;
- (c) items appearing of record or shown on the Title Commitment and, in any case, not objected to by Lessee or waived or deemed waived by Lessee in accordance with Sections 3.3(b) and 2.2(c) hereof;
- (d) any recordable documents which the parties hereto may mutually direct to be recorded against the Property or required to be recorded by Lessee's lender in connection with its financing;
- (e) any matter shown on the Survey (or would be shown on a correct survey); and
- (f) the Construction Parking Bulk Lease between the City and NASH-Holland Washington & Sixth, LLC with an effective date of May 1, 2019.

**Section 3.7 Condition of Property.**

(a) **"AS IS" CONVEYANCE.** LESSEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT IS GROUND LEASING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT LESSEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (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 PROPERTY; (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (F) THE COMPLIANCE OF THE PROPERTY 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 HAZARDOUS MATERIALS IN, ON, AT, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (H) THE CONDITION OF TITLE TO THE PROPERTY. LESSEE AFFIRMS THAT LESSEE HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. LESSEE 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 PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (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). LESSEE UNDERTAKES AND

ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S 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.

(b) Survival. The terms and conditions of this Section 3.7 shall expressly survive the Closing Date. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person except as set forth herein. Lessee has fully reviewed the disclaimers and waivers set forth in this Agreement with Lessee's counsel and understands the significance and effect thereof.

(c) Acknowledgment. Lessee acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (2) the disclaimers and other agreements set forth herein are an integral part of this Agreement, that the City would not have agreed to ground lease the Property to Lessee pursuant to this Agreement without the disclaimers and other agreements set forth in this Section 3.6.

(d) Lessee's Release of the City. Lessee, on behalf of itself and anyone claiming by, through or under Lessee hereby waives its right to recover from and fully and irrevocably releases the City, its governing council, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that Lessee may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (1) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (2) any presence of Hazardous Materials; and (3) any information furnished by the Released Parties under or in connection with this Agreement except as set forth herein.

(e) Scope of Release. The release set forth in Section 3.6(d) hereof includes claims of which Lessee is presently unaware or which Lessee does not presently suspect to exist which, if known by Lessee, would materially affect Lessee's release of the Released Parties. Lessee specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Lessee agrees, represents and warrants that Lessee realizes and acknowledges that factual matters now unknown to Lessee may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Lessee further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Lessee nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses.

#### Section 3.8 Costs of Escrow and Closing.

City shall pay the cost for a standard leasehold insurance policy. Lessee shall pay the cost for ALTA coverage and any other endorsements, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close the Escrow.

#### Section 3.9 Real Estate Commissions.

City and Lessee each represent and warrant to the other that it has not engaged, in any manner, any broker or finder nor incurred any liability for any brokerage or finders' fees or commissions, in connection with this Agreement or the transactions contemplated thereby. City and Lessee shall indemnify, defend and hold harmless each other from and against any and all claims incurred or asserted against the other, and from and against all losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees, actually incurred by the other as a result of any claims of any broker or finder in connection with this Agreement or the transactions contemplated thereby where such claims are allegedly based on actions of the indemnifying party or its agents or representatives.

The provisions of this Section 3.9 shall survive termination of this Agreement.

#### **ARTICLE 4. ADDITIONAL GROUND LEASE TERMS**

The Ground Lease negotiated by the parties shall include the terms already agreed to in the LOI attached at Exhibit D and such other mutual acceptable and customary terms of a ground lease. In addition, the Ground Lease shall contain terms that substantially conform to the intent of the following provisions:

##### **Section 4.1 Permits and Conceptual Plan Approval**

(a) **Approval of Permits for Improvements.** Lessee shall secure all permits and approvals needed to construct the Improvements. Lessee shall use commercially reasonable efforts to apply for and secure all necessary permits and approvals to construct the Improvements as set forth in the Schedule of Performance attached hereto as Exhibit B. Failure to secure permits by the target deadlines in Schedule B shall not constitute an event of default.

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

(b) **Conceptual Design Plans.** By the date identified in Schedule B, Lessee shall submit conceptual design plans for the Improvements, including the most current plan set available, to the City for the City's review and approval.

The City shall approve or disapprove the conceptual design plans for the Improvements in writing within thirty (30) days following the City's receipt of the conceptual design plans for the Improvements. If the conceptual design plans for the Improvements are disapproved by the City, the City shall deliver a written notice to Lessee setting forth, in reasonable detail, the reasons for such disapproval. Lessee shall have fifteen (15) days following the receipt of such notice to submit revised conceptual design plans for the Improvements.

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

##### **Section 4.2 Improvements to Conform to Design Renderings.**

Unless modified by operation of Section 4.3, the Improvements shall be designed and constructed substantially in accordance with the approved conceptual design plans. The Improvements shall be constructed in a good and workmanlike lien free manner and the terms and conditions of the land use permits and approvals and building permits granted by the City.

#### Section 4.3 Change in Design or Construction of Improvements.

(a) Within the timeframe set forth in the Schedule of Performance, the City shall prepare and present to the Vancouver City Council an amendment to section 20.630.020 "Building Lines" of the Vancouver Municipal Code to allow the 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 revision would authorize a charge of \$1.40 per square foot of total floor area located in the right-of-way. The fee may be increased by percentage increase in the Consumer Price Index subject to a 3% cap ("Code Amendment"). Lessee agrees that the provision shall not be construed as a binding obligation on the City to amend the VMC and the City Council retains the sole and absolute discretion to approve this amendment to the VMC in accordance with their approval criteria.

(b) In the event the City does not approve the Code Amendment, City acknowledges that Lessee will be required to amend the scope of the Improvements to reduce their size ("Overhang Redesign"). Lessee shall propose changes in the Improvements to conform to existing zoning regulations. Lessee shall submit the Overhang Redesign to the City for its prior review and approval (which shall be separate from the City's permit review and approval process), which approval shall not be unreasonably conditioned, withheld or delayed. City and Lessee shall work in good faith to agree upon the Overhang Redesign.

(c) The approval of changes in the Construction Plans by the City pursuant to this Section shall be in addition to any approvals required to be obtained from the City pursuant to building permit requirements. Approval of changes in the Construction Plans by the City shall not constitute approval by the City and shall in no way limit the City's discretion in approving changes to the Construction Plans.

#### Section 4.4 Property Tax Exemption.

Subject to Holland submitting a complete the application and information as required and in compliance with the VMC Chapter 3.22, the parties hereby confirm and agree that the City will consider conditional approval of the eight (8) year tax exemption with 20% of the units renting at no more than 100% Area Median Income which shall be applicable to a five story multi-family building with approximately 105 to 110 units constructed substantially in accordance with the architectural elevations attached hereto as Exhibit C. Nothing herein shall be deemed an approval of such tax exemption.

#### Section 4.5 Commencement of Construction Improvements.

(a) Lessee shall commence construction of the Improvements no later than the date set forth in the Schedule of Performance. Lessee's failure to commence construction by the deadline in the Schedule of Performance, subject to delay due to force majeure or an Overhang Redesign, shall constitute an event of default under the Ground Lease and shall entitle the City to exercise its remedies under the Ground Lease including without limitation to terminate the Ground Lease.

(b) Prior to the start of construction, Lessee shall give sixty (60) days' written notice to the Vancouver Downtown Association ("VDA") to remove improvements installed by VDA at the Property. If VDA does not remove the improvements before construction, Lessee shall remove and deliver such improvements to the VDA at Lessee's sole cost and expense.

#### Section 4.6 Completion of the Improvements.

Lessee shall diligently prosecute to completion the construction of the Improvements no later than the date set forth in the Schedule of Performance. Lessee's failure to complete the Improvements by the deadline in the Schedule of Performance, subject to delay due to force majeure or an Overhang Redesign, shall constitute an event of default under the Ground Lease and entitle City to exercise its remedies under the Ground Lease including without limitation the City's rights under the Performance Obligation and Guaranty.

#### Section 4.7 Progress Report.

Until such time as Lessee has completed construction of the Improvements, as evidenced by issuance of final Certificates of Occupancy by the City for the Development, Lessee shall provide the City with monthly progress reports, or more frequent updates if City reasonably requires, regarding the status of the Development.

#### Section 4.8 Construction Responsibilities.

(a) It shall be the responsibility of Lessee to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement including without limitation the Schedule of Performance.

(b) Lessee shall be solely responsible for all aspects of Lessee's conduct in connection with the Development, 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 the City with reference to the Development is solely for determining whether Purchaser is properly discharging its obligations to the City and should not be relied upon by Lessee or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

#### Section 4.9 Certificate of Completion.

Promptly after completion of all the Improvements on the Property in accordance with those provisions of this Agreement relating solely to the obligations of Lessee to construct the Improvements, the City shall provide an instrument so certifying the completion of the Improvements on the Property (the "Certificate of Completion"). The Certificate of Completion shall be conclusive determination that the covenants in this Agreement with respect to the obligations of Lessee to construct the Improvements on the Property have been met and provide grounds for termination of this Agreement as an encumbrance on the Property. Issuance of a Certificate of Completion by the City, however, shall not terminate the indemnity obligations of Lessee that survive the termination of this Agreement. The issuance of such Certificate of Completion shall be in addition to any approvals required to be obtained from the City pursuant to building permit requirements concerning temporary or permanent occupancy of the Improvements and such issuance shall City shall not constitute approval by the City regrading occupancy or any way limit the City's discretion in approving the Improvements for temporary or permanent occupancy.

#### Section 4.10 Entry by the City.

Lessee shall permit the City, through its officers, agents, or employees, at all reasonable times to enter into the Development after reasonable advanced written notice and acceptance by Lessee: (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement; and (b) following completion of construction, to inspect the ongoing operation and management of the Development to determine that the same is in conformance with the requirements of

this Agreement. Purchaser acknowledges that the City is under no obligation to supervise, inspect, or inform Lessee of the progress of construction, or operations and Lessee shall not rely upon the City therefore. Any inspection by the City during the construction is entirely for its purposes in determining whether Lessee is in compliance with the Ground Lease and is not for the purpose of determining or informing Lessee of the quality or suitability of construction. Lessee 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.

## ARTICLE 5. REPRESENTATIONS AND WARRANTIES

### Section 5.1 Representations and Warranties of City.

City hereby makes the following representations and warranties to Lessee as of the Effective Date, which representations and warranties shall be deemed re-made as of the Closing, subject to the qualifications and exceptions provided in this Agreement:

(a) Organization and Authority. City is a Washington municipal corporation. City has the full right and authority to enter into this Agreement and to ground lease all of the Property and to otherwise consummate or cause to be consummated the transactions contemplated herein. The person signing this Agreement on behalf of City is authorized to do so. No consent, approval or action of, filing with or notice to any governmental or regulatory authority or any other person or entity on the part of City is required in connection with the execution, delivery and performance of Agreement or the consummation of the transactions contemplated.

(b) No Breach. The execution, delivery and performance of this Agreement by City and the consummation of the transaction contemplated herein will not: (i) to City's knowledge, result in a breach or acceleration of or constitute a default or event of termination under the provisions of any agreement or instrument by which the Property is bound or affected which would have a material adverse impact on the value of the Property or Lessee's ability to ground lease the Property; (ii) except for the Ground Lease, result in the creation or imposition of any lien, charge or encumbrance, against the Property or any portion thereof; or (iii) constitute or result in the violation or breach by City of any judgment, order, writ, injunction or decree issued against or imposed upon City or, to City's knowledge, result in the violation of any applicable law, rule or regulation of any governmental authority.

(c) Litigation. City has not received written notice of any litigation, claim, suit, hearing or investigation which has been filed or served against City or, to City's knowledge, the Property, that arises out of the ownership of the Property or would materially and adversely affect City's ability to perform its obligations hereunder.

(d) Condemnation. City has not received written notice of any pending condemnation proceedings relating to the Property, and to City's knowledge no such proceeding has been threatened.

(e) Hazardous Materials. To City's knowledge, except as disclosed in writing to Lessee City has received no written notice that the Property is in violation of any Hazardous Materials Laws.



**Section 5.2 City's Knowledge**

The term "City's knowledge" or any reference thereto shall mean and apply to the actual knowledge of the Community and Economic Development Director without any investigation or inquiry having been made or any implied duty to investigate or to make any inquiries.

**Section 5.3 Survival of City's Representations and Warranties: Indemnification**

City's liability with respect to the representations and warranties of City set forth in this Agreement shall survive the Closing Date for a period of twelve (12) months (the "Survival Period"). From and after the Closing and until the end of the Survival Period City shall indemnify, defend and hold harmless Lessee, and each of Lessee's members, managers, employees, agents, successors and assigns ("Lessee Parties"), from and against any and all claims, demands, actions, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and reasonable attorneys' fees, that Lessee shall incur or suffer as a result of, or that arise, result from or relate to any intentional, material breach of any of City's representations, warranties or covenants under this Agreement.

**Section 5.4 Representations and Warranties of Lessee**

Lessee hereby represents and warrants to City:

(a) **ERISA**. Lessee is not financing the ground lease or construction of Improvements on the Property with the assets of an employee benefit plan as defined in Section 3(3) of ERISA.

(b) **Organization and Authority**. Lessee has been duly organized or formed and is validly existing under the laws of Washington. Lessee has the full right, power and authority to ground lease the Property as provided in this Agreement and to carry out Lessee's obligations hereunder, and all requisite action necessary to authorize Lessee to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been, taken. The person signing this Agreement on behalf of Lessee is authorized to do so, and this Agreement is enforceable against Lessee in accordance with its terms, subject to bankruptcy, insolvency and similar laws.

(c) **Pending Actions**. There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Lessee which, if adversely determined, could individually or in the aggregate materially interfere with Lessee's ability to consummate of the transaction contemplated by this Agreement.

(d) **Patriot Act and OFAC Compliance**. Neither Lessee nor, to Lessee's knowledge, any individual or entity having any interest in Lessee is (i) listed on the Specially Designated Nationals and Blocked Persons List or any other similar list maintained by the Office of Foreign Assets Control or the U.S. Department of the Treasury, pursuant to any authorizing statute, executive order or regulation; or (ii) a "specially designated global terrorist" or other person listed on Appendix A to Chapter V of 31 C.F.R., as the same has been from time to time updated and amended; or (iii) a person either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515; or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or a person similarly designated under any related enabling legislation or any other similar Executive Orders.

(e) **Corporate Headquarters**. Lessee shall cause Holland Partner Group to lease no less than two (2) full floors, containing approximately 40,000 square feet, of the Improvements for a base lease term

of no less than 10 years and shall cause Holland Partner Group to relocate its Corporate Headquarters to such leased premises upon completion of construction.

**Section 5.5 Survival of Lessee's Representations and Warranties.**

Lessee's liability with respect to the representations and warranties of Lessee set forth in this Agreement shall survive the Closing.

**ARTICLE 6.  
DEFAULT AND REMEDIES**

**Section 6.1 General Applicability.**

The provisions of this Article shall govern the Parties' remedies for breach or failure of this Agreement.

**Section 6.2 Default by Lessee.**

If Lessee shall default in the performance of any of its obligations to be performed on or before the Closing Date and such default shall continue for seven (7) Business Days after written notice to Lessee, City, as its sole and exclusive remedy, may terminate this Agreement and receive the Deposit as liquidated damages for the breach of this Agreement, it being agreed between the parties hereto that the actual damages to City in the event of such breach are impractical to ascertain and the amount of the Deposit is a reasonable estimate thereof. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES AND AS CITY'S EXCLUSIVE REMEDY AGAINST LESSEE, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT TO CONSUMMATE THE GROUND LEASE CONTEMPLATED BY THIS AGREEMENT ON THE PART OF LESSEE. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY.

INITIALS: City 

Lessee 

  
APPROVED BY THE  
CITY OF PORTLAND

Nothing contained in this Section 6.2 shall limit or prevent City from (i) enforcing any indemnity obligation of Lessee under this Agreement or preclude City from obtaining a damage award in connection therewith, or (ii) enforcing Lessee's other obligations and liabilities which survive a termination of this Agreement other than entering into the Ground Lease.

**Section 6.3 Default by City.** If City defaults in its obligation to close this Agreement (and such default shall continue for seven (7) Business Days after written notice to City), Lessee shall be entitled, as its sole and exclusive remedy shall elect either: (i) to terminate this Agreement, in which event (A) the Deposit shall be promptly returned to Lessee and (B) all other rights and obligations of City and Lessee hereunder (except those set forth herein which expressly survive a termination of this Agreement) shall terminate immediately; or (ii) to waive such matter or condition and proceed to Closing with no change to the agreed upon ground lease terms in the LOI. Notwithstanding the preceding sentence, if, at the Closing, City fails

to comply in any material respect with any of its obligations contained in Section 3.4 (the "Closing Obligations"), and if all conditions precedent to City's obligations hereunder have been waived or satisfied, Lessee shall have, in lieu of Lessee's remedies contained in the preceding sentence, the option to waive all other actions, rights, or claims for damages for the failure to perform such Closing Obligations (other than costs and expenses incurred in enforcing this Agreement and its right to enforce the indemnities and other provisions of this Agreement which expressly survive a termination of this Agreement or Closing), and to bring an equitable action to specifically enforce the Closing Obligations; provided, Lessee's suit for specific performance shall be filed against City in a court having jurisdiction in the county and state in which the Property is located, on or before forty-five (45) days following the date the Closing Date should have occurred, failing which, Lessee shall be barred from enforcing this Agreement by specific performance and shall be deemed to have elected to terminate this Agreement as provided herein. If Lessee files a suit to enforce the Closing Obligations by specific performance, Lessee shall accept the Property from City subject only to the Permitted Exceptions. Other than as expressly provided herein, Lessee hereby waives any right to any damages resulting from City's failure to perform its Closing Obligations or in the event of City's default hereunder. The foregoing waiver is a material inducement to Seller in entering into this Agreement and shall survive the termination or expiration of this Agreement.

## ARTICLE 7. GENERAL PROVISIONS

### Section 7.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the City and Lessee shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail/return receipt, or delivered personally, to the principal offices of the City and Lessee as follows:

City:

City of Vancouver  
415 West 6<sup>th</sup> Street  
Vancouver, WA 98660  
Attn:

With a Copy to:

City of Vancouver  
415 West 6<sup>th</sup> Street  
Vancouver, WA 98660  
Attn: City Attorney

Houlihan Law PC  
303 E. 16<sup>th</sup> Street, Suite 201  
Vancouver, WA  
John@houlihan-law.com  
jt@houlihan-law.com

Lessee:  
Holland Acquisition Co., LLC  
c/o Holland Partner Group

1111 Main Street, Suite 700  
Vancouver, WA 98660  
Attn: Principal Staff Officer / Notices  
notices@hollandpartnergroup.com

With a Copy to:  
The Oregon Law Group  
1675 SW Marlow Avenue, Suite 404  
Portland, OR 97225  
Attn: Joel Kaplan  
notices@oregonlawgroup.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate in writing. No party shall evade or refuse delivery of any notice.

**Section 7.2 Non-Liability of City Officials, Employees and Agents.**

No member, official, employee or agent of the City shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Lessee or successor or on any obligation under the terms of this Agreement.

**Section 7.3 Force Majeure Delay.**

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; litigation (including suits filed by third parties concerning or arising out of this Agreement); inability to secure necessary labor, materials or tools; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the City); or any other causes (other than Lessee's inability to obtain financing for the Improvements) beyond the reasonable and foreseeable control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the date the party seeking the extension first discovered the cause. Times of performance under this Agreement may also be extended in writing by the City and Lessee. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing.

**Section 7.4 Title of Parts and Sections.**

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

**Section 7.5 General Indemnification.**

Each Party (the "Indemnifying Party") agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the other Party) the other Party (the "Indemnified Party") and its respective governing council members, managers and employees, from all suits, actions, claims, causes of action, administrative proceedings, arbitrations, enforcement actions, costs, demands, judgments and liens arising out of Indemnifying Party's performance or non-performance under this Agreement, or any other

agreement executed pursuant to this Agreement, or arising out of acts or omissions of any of Indemnifying Party's contractors, subcontractors, or persons claiming under any of the aforesaid, except as directly caused by the Indemnified Party's willful misconduct or gross negligence. The provisions of this Section shall survive termination of this Agreement.

**Section 7.6 Applicable Law.**

This Agreement shall, in all respects, be governed, interpreted and enforced under and pursuant to the laws of the State of Washington.

**Section 7.7 Severability.**

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

**Section 7.8 Venue.**

In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of Clark County, Washington.

**Section 7.9 Binding Upon Successors.**

(a) This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

(b) The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire except to the extent of the specific terms and conditions of any recorded documents. Each and every contract, ground lease, or other instrument hereafter executed covering or conveying the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases the Property from the requirements of this Agreement.

**Section 7.10 Parties Not Co-Venturers.**

Nothing in this Agreement is intended to or does establish the Parties as partners, joint-venturers, co-venturers, or principal and agent with one another.

**Section 7.11 No Third-Party Beneficiaries.**

No person or entity other than the City, Lessee, and their permitted successors and assigns shall have any right of action under this Agreement.

**Section 7.12 Time is of the Essence.**

In all matters under this Agreement, the Parties agree that time is of the essence.

**Section 7.13 Action by the City.**

Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Attorney or by any person who shall have been designated in writing to Lessee by the City Manager, without further approval by the City Council. Any such action shall be in writing.

**Section 7.14 Discretion Retained by City.**

The City's execution of this Agreement does not constitute approval by the City and in no way limits the discretion of the City as part of the permit and approval process under applicable City Ordinances in connection with design, permitting and construction of the Improvements.

**Section 7.15 Complete Understanding of the Parties.**

This Agreement may be executed in counterparts and multiple originals. This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement.

**Section 7.16 Amendments.**

The Parties can amend this Agreement only by means of a writing executed by all Parties.

**Section 7.17 Implementation Agreements.**

The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements mutually approved in writing and signed by the Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof. Operating memoranda or implementation agreements may be executed on the City's behalf by the City Attorney or any person who shall have been designated in writing to Lessee by the City Manager. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Notwithstanding the foregoing, nothing in this Section shall be deemed to require the City to consider any request by Lessee for a waiver of any particular obligation as set forth herein.

**Section 7.18 Assignment.**

Lessee shall be permitted to assign this Agreement, the Deposit and the rights of Lessee in connection therewith, once to a "Lessee's Affiliate" without the prior written consent of City, provided that Lessee delivers written notice no later than 10 days prior to the effective date of such assignment which shall provide reasonable evidence that the assignee is a "Lessee Affiliate" as defined herein. "Lessee's

**Affiliate” means (a) any entity that directly or indirectly controls, is controlled by or is under common control with Lessee or (b) any entity at least a majority of whose economic interest is owned by Lessee. The term “control” means the power to direct the management of such entity through voting rights, ownership or contractual obligations. Except for the first assignment to a Lessee’s Affiliate, Lessee shall not assign its rights under this Agreement without the prior written consent of City which may be granted, denied or conditioned in the City’s sole and absolute discretion. No assignments shall relieve the assigning party from its obligations under this Agreement.**

**Section 7.19 Attorney Fees.**

**If any action or proceeding is commenced by either party to enforce their rights under this Agreement or to collect damages as a result of the breach of any of the provisions of this Agreement, the substantially prevailing party in such action or proceeding, including any appellate proceedings, shall be entitled to recover all reasonable costs and expenses, including, without limitation, reasonable attorneys’ fees and court costs, in addition to other relief awarded by the court.**

**Section 7.20 Construction.**

**The Parties acknowledge that they have each reviewed and revised this Agreement with their respective counsel and that the normal rule of construction that provides for ambiguities to be construed against the drafter shall not be applied when interpreting this Agreement.**

**Section 7.21 Multiple Originals; Counterparts.**

**This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.**


**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

Approved as to form:  
  
E. Bronson Potter, City Attorney  


LESSOR:

**THE CITY OF VANCOUVER**, a Washington municipal corporation

By:   
Name: ERIC HOLMES  
Title: City Manager

LESSEE:

**HOLLAND ACQUISITION CO., LLC**,  
By: **Holland Partner Group Management, Inc.**  
its Manager

By:   
Clyde Holland  
Chairman and CEO

  
OREGON LAW  
Approved for Signature  
By: 



**ACCEPTANCE BY ESCROW AGENT:**

**Fidelity National Title hereby acknowledges that it has received a fully executed original or original executed counterparts of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions and agrees to act as Escrow Agent thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Agent.**

Dated: \_\_\_\_\_, 2019

Fidelity National Title

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

**EXHIBIT A  
LEGAL DESCRIPTION OF THE LAND**

**Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 10 West Vancouver according to the plat thereof recorded in Volume B of Plats, Page 40, records of Clark County Washington.**

**EXHIBIT B  
SCHEDULE OF PERFORMANCE**

This Schedule of Performance summarizes the proposed schedule for various milestones under the Ground Lease. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Disposition and Development Agreement to which such items relate. Except for the commencement of construction and completion of construction, the Completion dates noted below are goals not deadlines, and so long as Lessee uses commercially reasonable diligence and efforts to complete the milestones set for the below and the Improvements, the failure to complete a milestone by the corresponding Date of Completion shall not constitute a failure of a condition or a default under the Agreement.

Lessee shall consult with Agency staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form.

Item	Milestone	Target Submission Date (if applicable)	Target Date of Completion
1.	Submission of Code Amendment to VMC 20.630.020		
2.	Pre-Application Meeting		30 days from Effective Date
3.	Site Approvals	November 14, 2019	60 days from submission
4.	City Council to hold public hearing on Code Amendment		November 18, 2019
5.	Delivery of conceptual design plans	November 14, 2019	
6.	Shoring & Excavation Permit	February 5, 2020	March 18, 2020
7.	Commence Construction		May 31, 2020
8.	Podium Building Permit	March 31, 2020	June 9, 2020
9.	Office Core & Shell Permit	June 10, 2020	September 2, 2020
10.	Multi Family Building Permit	June 10, 2020	September 2, 2020
11.	Tenant Improvement Permit	February 4, 2021	April 29, 2021
12.	Completion of Construction		30 months after issuance of Shoring and Excavation Permit

**EXHIBIT C  
DESIGN RENDERINGS**

**EXHIBIT D**  
**LETTER OF INTENT**



September 18, 2019

Via Email to: [cric.holmes@cityofvancouver.us](mailto:cric.holmes@cityofvancouver.us)

Eric Holmes  
City Manager  
City of Vancouver  
415 West 6th Street  
P.O. Box 1995  
Vancouver, WA 98668

**Re: Letter of Intent for Ground Lease of Block 10**

Dear Eric,

We are pleased to present this offer to ground lease the Block 10 parcel downtown Vancouver (the "Property"). We are submitting this offer on a confidential basis, and request that you honor its confidentiality. The purpose of this letter is to set forth a basis upon which the parties, together with their respective attorneys, may proceed to draft and negotiate toward the execution of a definitive and binding Disposition and Development Agreement (the "DDA"). During negotiation of the DDA, Holland requests the opportunity to present a business case on (1) how to retain and enhance Vancouver's current competitive advantages over other employment centers and (2) how to use A Stronger Vancouver revenues and programs to enhance the business environment, livability and attractiveness of downtown Vancouver. It is understood that either party may terminate negotiations of the DDA at any time and for any reason prior to its execution.

Holland Partner Group is a fully integrated real estate development company with five operating divisions, development, construction, investments, redevelopment and property management. Holland operates in five markets, SW Washington and Portland, Seattle, Denver, Northern California and Southern California. Our Partners' experience with development and redevelopment of multi-family and mixed-use assets represents approximately 50,000 units totaling over \$10 billion in value. In all markets in which we participate, we have chosen to focus on primarily urban sites proximate to employment centers and public transportation.

For more information on Holland Partner Group and our projects, please visit our website at <http://www.hollandpartnergroup.com/>.

This Letter of Intent includes the general terms and conditions upon which Holland Acquisition Co., LLC (“Holland”) desires to finalize a DDA with the City of Vancouver (“City”) for the ground lease of Block 10. Except for the items set forth in Section B below, this letter does not constitute a binding agreement or contract, and neither Holland nor City will be bound to lease Block 10 unless both Holland and City execute a binding DDA.

A. Non-Binding Terms. The following sets forth the anticipated but non-binding terms and conditions under which the City would ground lease Block 10 to Holland:

1. **Block 10:** Block 10 is bounded by Columbia Street to the west, W. 9<sup>th</sup> Street to the north, Washington Street to the east and W 8<sup>th</sup> Street to the south in Vancouver, Washington. The parties acknowledge that Block 10 may be subject to a short plat process to facilitate a ground lease transaction. Holland will reimburse the City for permitting fees and reasonable third-party costs incurred in the short plat process.
2. **DDA:** Promptly following the execution of this letter of intent, the parties will negotiate in good faith toward the execution of a definitive DDA. The initial negotiations will include a confirmation by the City that Holland is designated as the exclusive party with whom the City is negotiating a sale or lease of Block 10 and that all prior negotiations and commitments have expired. The DDA shall include the terms and conditions customarily set forth in an “Agreement to Ground Lease” including contingency periods for the condition of the property, title, project feasibility, permitting and financing. The DDA shall also provide that if parties have not already done so then they shall negotiate the definitive terms of a ground lease within 30 days of execution of the DDA. The parties acknowledge and agree to negotiate in good faith with respect to the structure of the ground lease to facilitate development of the project and potential segregation of leasehold improvement ownership between the three main components of the project as outlined below.  

The target date for approval by the Council of this letter of intent is September 9, 2019. The target date for execution of the DDA (which will include the form of ground lease) is October 21, 2019. Any City fees payable for the DDA application and processing will be paid by Holland.
3. **Deposit:** On execution of the DDA, Holland will fund an earnest money deposit of \$250,000 to be held by the City. In the event the transaction fails to close

due to Holland's default, the deposit will be retained by the City as liquidated damages. The deposit shall be converted to a security deposit under the ground lease which will be refunded 60 days after Holland demonstrates that it has expended at least \$5 million in onsite construction hard costs.

4. Development:

Holland anticipates developing a mixed-use project with a 4-story office building and a 5-story residential building with a minimum of 100 units constructed over a common 2-story podium with structured parking and retail spaces. The residential project shall include 20% of the units at no more than 100% of Area Median Income to satisfy an 8-year Multi-Family Tax Abatement. A preliminary massing study is attached as Exhibit A. Buildings must be approved through the City's downtown design review process for consistency with adopted design guidelines. Ground floor retail, in select areas indicated in Exhibit A, will be required on 8th Street, Columbia, and Washington frontages. Holland will be obligated at its cost and expense to construct full frontage improvements (replacement of sidewalks, curbs, lights, trees, etc.); underground all overhead utilities including cables extending off-site at SE corner of Block 10; and secure LEED, Earth Advantage or similar certification of the building(s). Holland understands that the Riverview Bank ATM and associated improvements on 9th Street operate subject to a revocable permit. The DDA will provide for the timing of the City's revocation of the permit in relation to Closing.

Holland intends and would commit in the DDA to move its corporate headquarters to the new building. The DDA and ground lease will require construction and completion of the project in its entirety on a basis to be described in a construction schedule to be incorporated into the DDA. Construction will be required to commence within 90 days of Ground Lease execution, subject to the City processing required building permits in a timely manner.

The project will include at least 110 parking stalls. Any additional required parking will be satisfied through a shared parking license at the Vancouvercenter parking garage.

The ground lease will provide for construction completion and performance guaranty by Holland Partner Group Investments, LLC, the intent of the parties being to provide security for the completion of project construction and performance of the ground lease from a financially viable party and no less than the guaranty provided to any construction lender.



5. Ground Lease / Option to Acquire Lessor Fee Interest / Ground Lessee: The initial term of the ground lease will be 60 years with a single extension term of 39 years. The ground lease will provide an option, in favor of Holland, to purchase the Property at (1) at the expiration of the 60<sup>th</sup> year of the ground lease, (2) conditioned on due and timely exercise of the extension option, at the expiration of the 80<sup>th</sup> year of the ground lease; or (3) conditioned on due and timely exercise of the extension option, at expiration of extension term. The purchase price of the Property shall be equal to the fair market value of the Property at that time appraised to its highest and best use, based on then existing zoning and as if unimproved. The determination of fair market value shall not take into account the then existing improvements or the ground lease.

The ground lessee shall be an LLC or other legal entity majority owned or controlled by Holland. The DDA and ground lease shall provide reasonable restrictions on the sale or assignment of the DDA or leasehold interests with the parties' intent being that Holland shall remain the main developer/proponent of the project during the DDA, and ground lease through at least substantial completion of construction. The assignment provisions are not intended to restrict assignments as may be commercially necessary to secure equity or debt for the project so long as Holland remains in control subject to commercially reasonable approvals/consents as may be required in the lessee operating agreement or loan documents.

The ground lease shall not be subject to cross-collateralization or cross-default agreements with other Holland projects.

The ground lease will anticipate and include provisions permitting conversion of the project into up to three commercial condominiums units, one for the office building, one for the residential building and possibly a third for the parking and retail uses. The conversion into condominiums would occur following completion of construction. Following conversion, Holland would have the right to replace the ground lease with up to three separate ground leases, each with respect to one of the condominium units. Holland would be named as the tenant under each separate ground lease until the condominium unit is transferred in accordance with applicable provisions of the separate ground lease. The ground rent would be apportioned among the separate ground leases based upon the relative appraised values of each condominium unit subject to the City's reasonable consent, not to be unreasonably withheld.

6. Ground Rent:
- The ground lease shall be an absolute triple net lease with all costs and expenses associated with the Property to be borne by the ground

lessee. The City will not subordinate its fee interest or leasehold interest to any lessee financing, however any financing of the City's fee interest will be subordinated to the leasehold interest. The ground lease will provide for appropriate recognition of the leasehold estate sufficient to enable the tenant to obtain market financing. The ground rent will be structured as follows: \$2,500 per month commencing upon execution of the ground lease thru the earlier of substantial completion of the project or 36 months after execution of the ground lease;

- \$66,500 per year / \$5,550 per month per month beginning 37 months after execution of the ground lease thru 48 months after execution of the ground lease;
- \$133,200 per year / \$11,100 per month beginning at 49 months after commencement of the ground lease thru start of the 11<sup>th</sup> lease year. This is calculated based on a 4% cap rate applied to \$3,330,000, the agreed value of the Property. Subject to the 11<sup>th</sup> year increase and the re-valuation provisions below, the rent will increase every year thereafter, beginning in the 5<sup>th</sup> lease year and continuing through the expiration of the lease, by the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) (the "CPI"), subject to an annual ceiling of 3%;
- In the 11<sup>th</sup> lease year, the rent shall increase to \$166,500 per year / \$13,875 per month based on a 5% cap rate applied to \$3,330,000, the agreed value of the Property;
- In lease years 30 and 45 and, if the extension is timely and duly exercised, in lease years 60 and 80, the rent shall be the greater of: (a) the prior year's rent as increased by the CPI; or (b) 5% multiplied by the fair market value of the Property. In no event shall the rent determined by the appraisal adjustment be increased by more than 15% over the then existing rent as increased by the CPI adjustment. The fair market value of the property shall be determined by mutual agreement of the parties and if they cannot agree then by appraisal. The fair market value shall be defined as the value of the property as if unimproved and assuming the then-existing use of the property.
- In the event lessee elects at any time during the ground lease or extension to redevelop the Property or expand the project (e.g.

additional floors or infill development) then the rent shall be recalculated and such new rent will commence as of the date of substantial completion of the redevelopment. The rent shall be the greater of: (a) the prior year's rent as increased by the CPI or as determined by the appraisal process noted above if redevelopment revaluation occurs in years 30, 45, 60 or 80; or (b) 5% multiplied by the fair market value of the Property. The fair market value of the property shall be determined by mutual agreement of the parties and if they cannot agree then by appraisal. The fair market value shall be defined as the value of the property as if unimproved assuming the then-current use applicable to the redevelopment. The new rent will be subject to the subsequent annual CPI adjustment and mark to market rent recalculations if applicable.

7. **Mutual Right of First Offer:** The ground lease will provide for mutual rights of first offer in the event the lessor or lessee desire to sell their respective interests. The rights of first offer will be structured to facilitate lessor and lessee leasehold financing.
8. **Closing:** The target date for closing into the ground lease is no later than year-end. The City acknowledges that the Property is in an Economic Opportunity Zone and Holland must close into the ground lease by year-end in order to qualify for full EOZ tax benefits, which are a material inducement to Holland. Both Holland and the City will use commercial reasonable efforts to commence construction by December 31, 2019.
9. **Housing:** Holland intends to include a housing component in the residential component to assist the City in meeting the area's housing needs. Through development of the DDA, we will explore several topics:
  - The City would commit to support Holland's application for a bond allocation
  - The City staff would recommend to the City Council that they commit to a property tax exemption for Block 10, the amount of which might vary based on the percentage of units set aside for affordable housing and at what level of AMI rents are set.
10. **Sidewalk Overhangs:** Holland anticipates that the office and residential portions of the project will overhang public sidewalks a maximum of 5 feet on all four façades at a height of not less than 12 feet from the sidewalk. Holland acknowledges that such overhangs will require an amendment to VMC Title 20, Land Use

and Development Code and that the City is not obligated to approve such an amendment. The City will work in good faith to amend VMC Title 20 in accordance with and subject to City and Washington legal requirements. Inability to secure the overhangs will require a redesign of the project. If the City does not amend VMC Title 20 the City will approve a smaller building that is consistent with code requirements subject to the then applicable City administrative fee and agree to an updated construction time schedule to accommodate redesign, etc. The City and Holland will work together to find a mutually acceptable structure during the preparation of the DDA.

If VMC Title 20 is amended to allow such over-hang use of the public right of way, the amendment will include provisions for annual fees to occupy the public right of way. Project overhangs described above will be subject to an applicable annual fee for the floor area located in the air space overhanging the right of way. The fee is estimated for the year 2020 at \$1.40/sf of floor area and will increase annually by the percentage increase in the CPI subject to a 3% cap. For example, if a total of 10,000 sq.ft. of floor area on multiple floors was located over the right of way, then initial annual fee would be \$14,000.00 The permit fees will be in addition to the Ground Lease rent and NNN expenses.

11. **Parking Structure:** As you are aware, Holland acquired from Vandevco the option to purchase the parking garage at Vancouvercenter. In conjunction with the DDA, the parties will negotiate a three-year extension of the current Option expiration. The parties will discuss whether to enter into a separate operating agreement whereby Holland would operate the garage during the option period extension. The extension will be conditioned upon Holland closing on the ground lease.
12. **SDCs:** The City will, during negotiation of the DDA, provide “not to exceed” estimates on all System Development Charges applicable to the project.

B. **Binding Provisions.** The following terms of this letter are binding on Holland and City:

1. **Existing Materials:** City shall provide Holland, within five (5) business days of City's execution of this letter, any and all documents, reports, studies, tests, engineering drawings, surveys or other pertinent materials which City has in its possession (or access to) which relate to Block 10.

2. Marketing of Property: City agrees that provided Holland is diligently pursuing an DDA with City, and during the term of the DDA, City will not (a) promote the sale or ground lease of Block 10 to, or solicit offers to purchase or ground lease Block 10 from, other parties, and (b) discuss or negotiate with other parties regarding any unsolicited offers received from third parties.
  
3. Confidentiality: Neither Holland nor City will disclose any of the forgoing without mutual approval except to their respective employees, counsel, professional advisors and current or prospective financial partners, City Council or as required by law. The parties acknowledge that this LOI and subsequent documents including without limitation the DDA and ground lease are subject to the Washington Public Records Act.

If these terms are agreeable, please sign this letter and return it to us via e-mail.

Eric, please call me if you have any questions. We look forward to working with you.

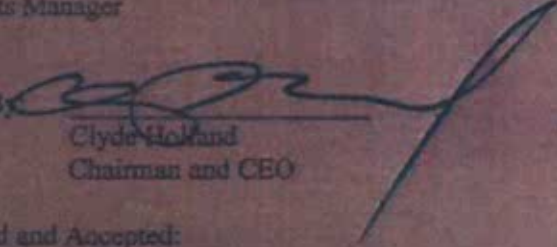
Sincerely,

Holland Acquisition Co., LLC,

By: Holland Partner Group Management, Inc.  
its Manager

~~XXXXXXXXXX~~


By:

  
Clyde Holland  
Chairman and CEO

Approved and Accepted:

City of Vancouver

By:

  
Name: Eric Holmes

Title: City Manager

Date: September \_\_, 2019

cc: Tom Parsons  
Greg Daniels  
Craig Parker  
Brenner Daniels  
Mark Bates  
Joel Kaplan

**EXHIBIT E**  
**FORM COMPLETION AND PERFORMANCE GUARANTY**

## PAYMENT GUARANTY

THIS PAYMENT GUARANTY (the "Guaranty") is dated as of October \_\_, 2019, and made and given by HOLLAND PARTNER GROUP INVESTMENTS, LLC, a Washington limited liability company (the "Guarantor"), for the benefit of the CITY OF VANCOUVER, a Washington municipal corporation (the "City").

### RECITALS:

A. The City and the Holland Acquisition Co., LLC, a Washington limited liability company (the "Company") have entered into that certain Land Disposition and Development Agreement (the "DDA") as of even date herewith, wherein, among other things, the Company will ground lease from the City and the City will ground lease to Company the real estate commonly referred to as Block 10 bounded by Washington, Columbia, West 8<sup>th</sup> and West 9<sup>th</sup> Streets in the City of Vancouver, Washington, and legally described in the DDA (the "Property").

B. Guarantor is an affiliate of the Company.

C. As an inducement for City to enter into the DDA with Company, Guarantor has agreed to execute and deliver this Guaranty to City.

### AGREEMENT:

NOW, THEREFORE, for and in consideration of the recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees as follows:

1. Capitalized terms used herein shall have the same meanings as set forth in the DDA unless specifically defined herein.

2. Guarantor does hereby guarantee to City the full and prompt payment of any and all indemnification obligations pursuant to Sections 2.2(a)(ii), 3.9 and 7.5 of the DDA (the "Payment Obligations"), including, without limitation, all reasonable attorneys' fees and costs incurred by City or caused by the enforcement of this Guaranty. The Payment Obligations do not include non-indemnity related defaults under the DDA, which are intended to be collateralized by the Deposit.

3. The "Guaranty Period" shall be the period commencing as of the date hereof and ending on the date in which the Company and the City execute the Ground Lease.

4. This Guaranty is an absolute and unconditional guarantee of the Payment Obligations. It shall be enforceable against Guarantor and Guarantor's successors and assigns, during the Guaranty Period only, without the necessity of any suit or proceedings on City's part of any kind or nature whatsoever against Company, its successors or assigns, upon fifteen (15) days written notice of nonpayment, nonperformance or nonobservance. Notice shall be mailed to Guarantor c/o Holland Partner Group, 1111 Main Street, Suite 700, Vancouver, Washington 98660, or at any subsequent address that Guarantor shall have provided City in



writing. Guarantor hereby expressly agrees that the validity of this Guaranty and the Payment Obligations of Guarantor hereunder shall in no way be terminated, affected or impaired by reason of assertion or the failure to assert by City against Company, or Company's successors and assigns, of any of the rights or remedies reserved to City pursuant to the provisions of the DDA.

This is a guaranty of payment and not of collection. All sums payable to City under this Guaranty shall be payable without reduction for any offset, claims, counterclaims or defenses. All obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances and shall not be discharged except by Guarantor's payment of the Guaranteed Obligations as herein provided. The liability of Guarantor under this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against Company or any other person, nor against any other property or monies now or hereafter securing the Payment Obligations whether held by City or by any person or entity on City's behalf or for City's account (the "Collateral"). Guarantor waives any right to require that an action be brought against Company or any other person or to require that resort be had to any Collateral. In the event, on account of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, Company shall be relieved of or fail to perform any of the Guaranteed Obligations, Guarantor shall nevertheless be fully liable therefor. In the event of a default under the DDA which is not cured within any applicable grace or cure period, the City shall have the right to enforce any or all of its rights, powers and remedies thereunder or hereunder, in any order and all rights, powers and remedies available to City in such event shall be nonexclusive and cumulative of all other rights, powers and remedies provided thereunder or hereunder or by law or in equity. If the Guaranteed Obligations are partially paid or discharged by reason of the exercise of any of the remedies available to City, this Guaranty shall nevertheless remain in full force and effect and Guarantor shall remain liable for all remaining Guaranteed Obligations, even though any rights which Guarantor may have against Company may be destroyed or diminished by the exercise of any such remedy. If the Guaranteed Obligations are otherwise partially paid or discharged for any reason, with or without the consent or cooperation of City, this Guaranty shall nevertheless remain in full force and effect and Guarantor shall remain liable for all remaining Guaranteed Obligations. Guarantor shall be liable, jointly and severally, with Company for all or any part of the Guaranteed Obligations.

5. To the extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of (as a defense or otherwise):

- i. Any right to require City to proceed against Company or any other person, including, without limitation, any other guarantor or to proceed against or exhaust any Collateral held by City at any time or to pursue any other remedy in City's power or under any other agreement before proceeding against Guarantor hereunder;
- ii. The defense of the statute of limitations in any action hereunder;
- iii. Any defense that may arise by reason of the incapacity, lack of authority, death or

disability of any other person or persons or the failure of City to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

- iv. Demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including, without limitation, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Company, City, any endorser or creditor of Company or of Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation held by City;
- v. Any defense based upon an election of remedies by City;
- vi. Any right or claim or right to cause a marshalling of the assets of Guarantor;
- vii. Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty;
- viii. Any duty on the part of City to disclose to Guarantor any facts City may now or hereafter know about Company or the Collateral, regardless of whether City 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, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Company, of the condition of the Collateral and of any and all circumstances bearing on the risk that liability may be incurred by Guarantor hereunder;
- ix. Any lack of notice of disposition or of manner of disposition of any Collateral;
- x. Failure to properly record any document or any other lack of due diligence by City in creating or perfecting a security interest in or collection, protection or realization upon any Collateral or in obtaining reimbursement or performance from any person or entity now or hereafter liable for the Loan Documents or any obligation secured thereby;
- xi. The inaccuracy of any representation or other provision contained in any DDA or Ground Lease document;
- xii. Any invalidity, irregularity or unenforceability, in whole or in part, of any one or more of the DDA documents;
- xiii. An assertion or claim that the automatic stay provided by 11 U.S.C. §362 (arising upon the voluntary or involuntary bankruptcy proceeding of Company) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay,

interdict, condition, reduce or inhibit the ability of City to enforce any of its rights, whether now or hereafter required, which City may have against Guarantor or the Collateral;

- xiv. Any modifications of the DDA or any obligation of Company relating to the DDA by operation of law or by action of any court, whether pursuant to the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect or otherwise;
- xv. The release of Company or of any other person or entity including, without limitation, any other guarantor from performance or observance of any of the agreements, covenants, terms or conditions contained in the DDA by operation of law, City's voluntary act or otherwise;
- xvi. The taking of any other action by City including, without limitation, giving any notice of default or any other notice to, or making any demand on, Company or any other guarantor of all or any part of the Guaranteed Obligations or any other party; and
- xvii. Any other circumstance which might otherwise constitute a defense available to, or discharge of, Company or any other guarantor of all or any part of the Guaranteed Obligations.

6. **Representations and Warranties.** Guarantor hereby represents and warrants the following to City:

- i. This Guaranty directly and substantially benefits Guarantor. By executing this Guaranty, Guarantor acknowledges and knowingly accepts the full range of risks encompassed within a contract of guaranty;
- ii. Guarantor is familiar with, and has independently reviewed, the books and records regarding the financial condition of Company and is familiar with the value of any and all Collateral intended to be security for the payment of all or any part of the Guaranteed Obligations; provided, however, Guarantor is not relying on such financial condition or Collateral as an inducement to enter into this Guaranty and is not relying in any manner on any representation or statement of City;
- iii. Guarantor has adequate means to obtain from Company on a continuing basis information concerning the financial condition of Company and Guarantor is not relying on City to furnish, and shall have no right to require City to obtain or disclose, any information with respect to the Guaranteed Obligations, the financial condition or character of Company or the ability of Company to pay the Guaranteed Obligations, the existence of any Collateral or security for the Guaranteed Obligations, the existence or nonexistence of any other guaranties of all or any part of the Guaranteed Obligations, any actions or non-action on part of City, Company or any other person or entity or any other matter, fact or

occurrence whatsoever;

- iv. Guarantor has the power and authority to execute, deliver and perform this Guaranty and any other agreements executed by the Guarantor contemporaneously herewith and the execution, delivery and performance of this Guaranty and any other agreements executed by Guarantor contemporaneously herewith do not and will not violate (i) any agreement or instrument to which Guarantor is a party; (ii) any law, rule, regulation or order of any governmental authority to which Guarantor is subject; or (iii) its articles or certificate of incorporation, bylaws, or operating agreement if Guarantor is a corporation or limited liability company, or its partnership agreement, if Guarantor is a partnership, or its trust agreement, if Guarantor is a trust;
- v. Neither City nor any other party has made any representation, warranty or statement to Guarantor in order to induce Guarantor to execute this Guaranty;
- vi. The financial statements and other financial information regarding Guarantor heretofore delivered to City are true and correct in all respects and fairly present the financial position of Guarantor as of the date thereof and no material adverse change has occurred in the financial condition of Guarantor reflected in the financial statements and other financial information regarding Guarantor heretofore delivered to City since the date of the last statement thereof;
- vii. As of the date hereof, and after giving effect to this Guaranty and the obligations evidenced hereby, (i) Guarantor is and will be solvent; (ii) the fair saleable value of Guarantor's assets exceeds and will continue to exceed Guarantor's liabilities (both fixed and contingent); (iii) Guarantor is and will continue to be able to pay Guarantor's debts as they mature; and (iv) if Guarantor is not an individual, Guarantor has and will continue to have sufficient capital to carry on Guarantor's business; and
- viii. Guarantor has timely and accurately filed all federal, state, local tax or information returns and Guarantor is not delinquent in the payment of any income, property or other federal, state or local tax or assessment.
- ix. Guarantor hereby agrees to indemnify and hold City free and harmless from and against all loss, cost, liability, damage and expense, including reasonable attorneys' fees and costs, which City may sustain by reason of the inaccuracy or breach of any of the foregoing representations and warranties as of the date such representations and warranties are made.

7. During the Guaranty Period, this Guaranty shall be a continuing guarantee, and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment of the DDA, or by reason of any dealings of transactions or matters or things occurring between City and Company, its successors and assigns, whether or not notice thereof is given to Guarantor; provided, however, that Guarantor shall have no further Payment Obligations after the expiration of the Guaranty Period.

8. Guarantor further represents and warrants to City, as an inducement for City to enter into the DDA with Company, that Guarantor has a financial interest in Company and that Guarantor has received adequate value for the grant of this Guaranty.

9. All of City's rights and remedies under the DDA and under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or in waiver of any of the others.

10. In the event suit or action is instituted to interpret or enforce the provisions of this Guaranty during the Guaranty Period, including, but not limited to obtaining injunctive relief, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees and costs at trial, in arbitration, on any appeal, and on any petition for review, in addition to all other sums provided by law.

11. Any action or proceeding brought by either party against the other for any matter arising out of or in any way relating to this Guaranty, the Property or the DDA, shall be heard, at City's option, in the court having jurisdiction located closest to the Property.

DATED AND EFFECTIVE 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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT F**

**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 \_\_\_\_\_, 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 Lessee 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 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 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 the earlier of forty-five (45) days after a Debt and Equity Cure could have been affected and was not affected ("Cure Period Expiration") or 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 commence 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 Improvements, the Landlord shall forebear 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 Section I shall terminate, and Landlord may elect either: (1) to terminate the Ground Lease and take title to the Premises and 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 the 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 Error! Reference source not found. and Error! Reference source not found. 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: [clcyde@hollandpartnergroup.com](mailto:clcyde@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: Elia Popovich  
E-mail: [notices@oregonlawgroup.com](mailto:notices@oregonlawgroup.com)

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

With 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  
[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., CEO

  
Clyde P. Holland, Jr.  
CEO