

**LAND DISPOSITION AND DEVELOPMENT AGREEMENT  
(WATERFRONT GATEWAY DEVELOPMENT)**

**BY AND BETWEEN**

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

**AND**

**LPC WEST, INC., a Texas profit corporation,**

**DATED EFFECTIVE OCTOBER \_\_, 2023**

**LAND DISPOSITION AND DEVELOPMENT AGREEMENT  
(WATERFRONT GATEWAY DEVELOPMENT)**

THIS LAND DISPOSITION AND DEVELOPMENT AGREEMENT (WATERFRONT GATEWAY DEVELOPMENT) is made as of October \_\_, 2023 (the “**Effective Date**”), by and between CITY OF VANCOUVER, a Washington municipal corporation (“**City**”), and LPC WEST, INC., a Texas profit corporation, and its permitted successors and assigns (“**LPC West**”). City and LPC West are each referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

A. City owns the real property commonly referred to as the “Vancouver Waterfront Gateway” site, which is located near the intersection of W 6<sup>th</sup> Street and Esther Street, in City of Vancouver, Washington, and legally described on Exhibit A-1 attached hereto (the “**Property**”).

B. City identified the Property, along with other nearby property not part of this Agreement, as a potential re-development site and entered into a November 4, 2019, Memorandum of Understanding with City Center Redevelopment Authority (the “**CCRA**”) that authorized the CCRA to solicit, select, and negotiate with a qualified master developer to develop the site pursuant to a master plan that would provide for a multi-story, mixed use district with public facilities and amenities on the Property. Any proposed master plan or disposition and development agreement arising out of the negotiations between LPC West and CCRA is subject to the review and approval by City Council.

C. On March 31, 2021, CCRA issued a “Request for Qualifications: Development Opportunity for a New District in Downtown Vancouver” (the “**RFQ**”) for the Property and, following a thorough review process, selected LPC West as the preferred master developer for the Property.

D. On November 18, 2021, CCRA and LPC West entered into an Exclusive Negotiation Agreement, which was subsequently extended by amendments through September 30, 2023 (collectively, the “**ENA**”).

E. LPC West and the CCRA have negotiated the elements of a master development plan and the terms of this Agreement. Pursuant to the master development plan, the Property is anticipated to be developed as five separate parcels, generally anticipated in the locations shown on Exhibit A-2 attached hereto, with final legal descriptions to be agreed to by the Parties as provided in Section 2.4.5 of this Agreement (each a “**Parcel**” and collectively the “**Parcels**”). For purposes of describing and distinguishing between the Parcels, and the manner and sequence in which they are to be leased or conveyed, this Agreement will reference Parcels 1, 2, 3, 4, and 5 as shown on Exhibit A-2.

F. As provided by the terms of this Agreement, the Parties anticipate that they will enter into a separate ground lease for at least three and up to four of the Parcels, and that City will convey one of the Parcels to LPC West. The Parties acknowledge and agree that City would not agree to ground lease or convey any Parcel to LPC West 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, LPC West and City agree as follows:

## ARTICLE 1. DEFINITIONS AND EXHIBITS

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

1.1.1 **“100% Schematic Design Plans and Drawings”** means the schematic design drawings of the Improvements attached as Exhibit B, which have been approved by City in its regulatory and proprietary capacities.

1.1.2 **“Additional Deposit”** has the meaning set forth in Section 3.3.1.

1.1.3 **“Affordable Housing Parcel”** and **“Parcel 3”** means the parcel identified on Exhibit A-2 as the **“Affordable Housing Parcel”**.

1.1.4 **“Agreement”** means this Disposition and Development Agreement, including the attached Exhibits and all subsequent duly executed memoranda, implementation agreements, and amendments to this Agreement.

1.1.5 **“Allocated Value”** has the meaning set forth in Section 4.1.3.1.

1.1.6 **“Approvals”** has the meaning given to it in Section 2.1.2.6.

1.1.7 **“Block X”** has the meaning set forth in Section 4.1.3.1.

1.1.8 **“Block Y”** has the meaning set forth in Section 4.1.3.1.

1.1.9 **“Business Days”** mean any day other than Saturday, Sunday, or a legal holiday in the state of Washington as provided by RCW 1.16.050(1) or a successor statute.

1.1.10 **“CC&Rs”** has the meaning given to it in Section 6.2.8.

1.1.11 **“CCRA”** has the meaning set forth in Recital B.

1.1.12 **“Certificate of Completion”** has the meaning given to it in Section 5.6.

1.1.13 **“Certificate of Occupancy”** means the temporary certificate of occupancy issued by City, or comparable City sign-off, for the completion of construction of a Component of the Improvements.

1.1.14 **“City”** has the meaning set forth in the introductory paragraph of this Agreement.

1.1.15 **“City Code”** has the meaning set forth in Section 2.1.1.5.

1.1.16 **“City’s Cure Notice”** has the meaning set forth in Section 3.4.3.4.

1.1.17 **“City’s knowledge”** has the meaning set forth in Section 7.2.

1.1.18 **“City Letter”** has the meaning set forth in Section 3.4.1.

1.1.19 **“Closing”** or to **“Close”** means, (a) as to any Parcel other than Parcel 3, the execution of the Ground Lease by the Parties and the recording of the Memorandum of Ground Lease for such Parcel,

and (b) with respect to Parcel 3, City's execution, delivery and recordation of the Deed conveying such Parcel to LPC West, and LPC West's payment of the purchase price therefor.

1.1.20 **"Closing Date"** means (a) the date of recording of the Memorandum of Ground Lease for a Parcel other than Parcel 3, and (b) the date of recording of the Deed for Parcel 3, all as further defined in Section 3.6.

1.1.21 **"Closing Obligations"** has the meaning set forth in Section 8.3.

1.1.22 **"Commence construction"** and **"commencement of construction"** have the meanings set forth in Section 5.2.

1.1.23 **"Completion Guaranty"** means a guaranty of completion of vertical improvements on a Parcel given by LPC West to City, the form of which will mirror the form and substance of the completion guaranty provided by LPC West to its construction lender.

1.1.24 **"Completion of construction"** has the meaning set forth in Section 5.3.

1.1.25 **"Component"** means the Improvements planned for development on a particular Parcel.

1.1.26 **"Condition Precedent"** and **"Conditions Precedent"** has the meanings set forth in Section 2.1.3.

1.1.27 **"Contaminated Soils"** has the meaning set forth in Section 3.11.

1.1.28 **"Deed"** has the meaning set forth in Section 3.2.5.1.

1.1.29 **"Deposit"** has the meaning set forth in Section 3.3.1.

1.1.30 **"Design Guidelines"** has the meaning set forth in Section 6.2.4.

1.1.31 **"Development"** means the Property and the Improvements.

1.1.32 **"Due Diligence Expiration Date"** has the meaning set forth in Section 2.4.2.

1.1.33 **"Due Diligence Period"** has the meaning set forth in Section 2.4.2.

1.1.34 **"Effective Date"** has the meaning given to it in the first sentence of this Agreement.

1.1.35 **"ENA"** has the meaning given to it in Recital D of this Agreement.

1.1.36 **"Escrow"** means, for each Parcel, the escrow established with the Title Company for the purpose of Closing on such Parcel.

1.1.37 **"Environmental Reports"** has the meaning set forth in Section 7.1.4.

1.1.38 **"Exception"** has the meaning set forth in Section 3.4.1.

1.1.39 **"Force Majeure"** has the meaning set forth in Section 11.6.1.

1.1.40 **“Force Majeure Event”** has the meaning set forth in Section 11.6.1.

1.1.41 **“Generator and Well”** has the meaning set forth in Section 3.5.2.

1.1.42 **“Ground Lease”** has the meaning set forth in Section 2.3.

1.1.43 **“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; 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.

1.1.44 **“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 Hazardous Materials and the work being performed under this Agreement.

1.1.45 **“Improvements”** means the planned redevelopment of the Property, as described in Article 6 of this Agreement, and depicted in the 100% Schematic Design Plans and Drawings attached as Exhibit B. If any conflict exists between this Agreement and the 100% Schematic Design Plans and Drawings, this Agreement will control. There are Improvements contemplated for construction with each Component.

1.1.46 **“Incremental Cost Estimate”** has the meaning set forth in Section 3.11.

1.1.47 **“Indemnified Party”** has the meaning set forth in Section 11.8.

1.1.48 **“Indemnifying Party”** has the meaning set forth in Section 11.8.

1.1.49 **“Initial Deposit”** has the meaning set forth in Section 3.3.1.

1.1.50 **“Initial Submittal”** has the meaning set forth in Section 6.2.6.1.

1.1.51 **“Laws”** has the meaning set forth in Section 7.1.6.

1.1.52 **“Legal Lot”** has the meaning set forth in Section 2.1.2.4.

1.1.53 **“LPC West”** has the meaning set forth in the introductory paragraph of this Agreement.

1.1.54 **“LPC West Due Diligence”** has the meaning set forth in Section 2.4.2.

1.1.55 **“LPC West’s Affiliate”** has the meaning set forth in Section 11.23.1.

1.1.56 **“LPC West’s knowledge”** has the meaning set forth in Section 7.6.

1.1.57 **“LPC West Parties”** has the meaning set forth in Section 7.3.

1.1.58 **“MFTE”** has the meaning set forth in Section 6.5.

1.1.59 **“MFTE Projects”** has the meaning set forth in Section 6.5.

1.1.60 **“Mortgage”** means a mortgage or deed of trust against a Parcel recorded in the real property records of the county in which the Parcel is located.

1.1.61 **“Mortgagee”** means the holder of any Mortgage affecting or encumbering a Parcel, or the Ground Lease on any Parcel, together with any successor or assignee of such holder including the first purchaser from Mortgagee if Mortgagee acquires the Parcel at a foreclosure sale or from Mortgagee following a deed in lieu of foreclosure. The term "Mortgagee" shall include any Mortgagee as owner of the Parcel as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a Mortgage as well as (a) any other person or entity who thereafter obtains title to the Parcel, from or through a Mortgagee or (b) any other purchaser at a foreclosure sale.

1.1.62 **“Must Remove Exceptions”** has the meaning set forth in Section 3.4.

1.1.63 **“New Exception”** has the meaning set forth in Section 3.4.3.1.

1.1.64 **“Open Space”** has the meaning set forth in Section 6.1.5.

1.1.65 **“Option”** has the meaning set forth in Section 3.12.

1.1.66 **“Option Period”** has the meaning set forth in Section 3.12.

1.1.67 **“Parcel”** and **“Parcels”** have the meanings given to them in Recital E.

1.1.68 **“Parcel 1”** means the parcel identified as “Parcel 1” on Exhibit A-2.

1.1.69 **“Parcel 2”** means the parcel identified as “Parcel 2” on Exhibit A-2.

1.1.70 **“Parcel 3”** and **“Affordable Housing Parcel”** mean the parcel identified as “Parcel 3” on Exhibit A-2.

1.1.71 **“Parcel 3 Transferee”** has the meaning set forth in Section 3.2.4.

1.1.72 **“Parcel 4”** means the parcel identified as “Parcel 4” on Exhibit A-2.

1.1.73 **“Parcel 5”** means the parcel identified as “Parcel 5” on Exhibit A-2.

1.1.74 **“Parcel-Specific New Exception”** has the meaning set forth in Section 3.4.3.2.

1.1.75 **“Parcel-Specific Survey”** has the meaning set forth in Section 3.4.3.2.

- 1.1.76 **"Parcel-Specific Title Commitment"** has the meaning set forth in Section 3.4.3.2.
- 1.1.77 **"Parcel-Specific Title Exam Deadline"** has the meaning set forth in Section 3.4.3.2.
- 1.1.78 **"Party"** and **"Parties"** has the meaning set forth in the introductory paragraph of this Agreement.
- 1.1.79 **"Permitted Exceptions"** has the meaning given to it in Section 3.7.
- 1.1.80 **"Phase 1 Closing Date"** has the meaning given to it in Section 3.6.1.
- 1.1.81 **"Phase 1 Outside Closing Date"** has the meaning given to it in Section 3.6.1.
- 1.1.82 **"PRAC"** has the meaning set forth in Section 6.2.6.1.
- 1.1.83 **"Property"** has the meaning set forth in Recital A.
- 1.1.84 **"Property Information"** has the meaning set forth in Section 2.4.1.
- 1.1.85 **"Public Benefit Feature"** has the meaning set forth in Section 6.5.
- 1.1.86 **"Released Parties"** has the meaning set forth in Section 3.8.4.
- 1.1.87 **"Remaining Deposit"** has the meaning set forth in Section 3.3.3.
- 1.1.88 **"Remediation Plan"** has the meaning set forth in Section 3.11.
- 1.1.89 **"Required Completion Date"** has the meaning set forth in Section 5.3.
- 1.1.90 **"RFQ"** has the meaning set forth in Recital C.
- 1.1.91 **"Schedule of Performance"** means the schedule attached to this Agreement as Exhibit D, which contains actions to be taken by the Parties pursuant to this Agreement to achieve the ground leasing and conveyance of the Parcels to LPC West and the development of the Components of the Improvements on the Property. The Schedule of Performance is subject to Force Majeure.
- 1.1.92 **"Survey"** has the meaning set forth in Section 3.4.1.
- 1.1.93 **"Survival Period"** has the meaning set forth in Section 7.3.
- 1.1.94 **"Title Affidavit"** has the meaning set forth in Section 3.4.4.
- 1.1.95 **"Title Commitment"** has the meaning set forth in Section 3.4.1.
- 1.1.96 **"Title Company"** means the Vancouver, Washington office of Chicago Title/Fidelity National Title at 655 West Columbia Way, Suite 200, Vancouver, WA 98660, unless modified pursuant to Section 3.3.
- 1.1.97 **"Title Exam Deadline"** has the meaning set forth in Section 3.4.2.

1.1.98 “**Title Policy**” has the meaning set forth in Section 2.1.2.9.

1.1.99 “**Title Update**” has the meaning set forth in Section 3.4.3.1.

1.1.100 “**Updated Title Exam Deadline**” has the meaning set forth in Section 3.4.3.1.

1.2 Exhibits and Schedules. The following exhibits and schedules are attached to and incorporated in the Agreement:

Exhibit A-1:	Legal Description of the Property
Exhibit A-2:	Depiction of the Parcels
Exhibit B:	100% Schematic Design Plans and Drawings
Exhibit C:	Intentionally Omitted
Exhibit D:	Schedule of Performance
Schedule 2.4.5:	Final Legal Lot Configuration
Schedule 3.2.4.1:	Form of Deed
Schedule 3.2.4.2:	Form of Assignment of Intangibles
Schedule 6.2.1:	Green Building Measures
Schedule 6.2.3:	Workforce and Business Development Strategy
Schedule 6.2.4:	Design Guidelines
Schedule 6.2.5:	Publicly Accessible Spaces and Amenities
Schedule 6.2.7:	Small Business Outreach and Marketing Plan
Schedule 6.2.9:	Tree Canopy Scope of Work
Schedule 6.5.2:	MFTE Public Benefits Cost Estimate
Schedule 7.1.4:	Environmental Reports

## **ARTICLE 2. PREDISPOSITION REQUIREMENTS**

2.1 Conditions Precedent.

2.1.1 City’s Conditions Precedent to Obligation to Ground Lease or Convey a Parcel. Notwithstanding anything in this Agreement to the contrary, City’s obligation to Close on any Parcel is subject to and contingent upon the satisfaction or waiver, as provided in Section 2.1.3, of the following Conditions Precedent, which are solely for the benefit of City:

2.1.1.1 *Initial Ground Lease Rent.* LPC West shall have deposited in Escrow any rent due at Closing pursuant to the Ground Lease for the relevant Parcel.

2.1.1.2 *Pre-Application Conference.* LPC West shall have held a pre-application conference with City to discuss the Component to be developed on the Parcel.

2.1.1.3 *No Default.* LPC West shall not be in default of its obligations under this Agreement in any material respect and beyond any applicable cure period.

2.1.1.4 *City Council Approval of Ground Lease and Finalization of each Individual Ground Lease.* The Parties shall have agreed to, and City Council shall have duly reviewed and approved, the form of Ground Lease, which the Parties are working to obtain on or before the date set forth in the Schedule of Performance. Prior to Closing, City staff shall have approved each separate Ground Lease with respect



to each Parcel, which shall be based on the form of Ground Lease to be approved by the parties on or before the date set forth in the Schedule of Performance. The parties understand and acknowledge that each Ground Lease entered into at Closing may include slightly different provisions, with such provisions related to distinctive characteristics or circumstances of the Parcel or Component of the Improvements to be developed on the Parcel.

2.1.1.5 *City Council Approval of Affordable Housing Parcel Conveyance.* With respect to Parcel 3 (the Affordable Housing Parcel), City Council shall have duly approved the disposition and conveyance of the parcel pursuant to the requirements of the Vancouver Municipal Code ("**City Code**"), which approval the Parties are working to obtain on or before the date set forth in the Schedule of Performance.

2.1.1.6 *Representations and Warranties.* All representations and warranties of LPC West contained in any part of this Agreement shall be true and correct in all material respects as of the Closing Date.

2.1.1.7 *Closing Documents.* LPC West shall have delivered to Escrow duly executed copies of the following documents related to the Closing for the relevant Parcel:

- (i) Ground Lease for each of Parcels 1, 2, 4 and 5;
- (ii) Memorandum of Ground Lease in recordable form for each of Parcels 1, 2, 4 and 5;
- (iii) The Completion Guaranty;
- (iv) Such other documents as the Title Company may reasonably request to issue the Title Policy for the relevant Parcel; and
- (v) Such other documents as may be reasonably required to effectuate the Closing of the Ground Lease or Purchase of a parcel pursuant to this Agreement.

2.1.1.8 *No Litigation.* There is no pending claim, dispute, or litigation that prevents or is likely to prevent City from performing its obligations under this Agreement; *provided, however*, that a pending claim, dispute, or litigation arising from an event that constitutes a material breach of this Agreement by City shall not excuse the performance by City and shall not be a reason this Condition Precedent is unsatisfied.

2.1.1.9 *Financing.* LPC West shall have provided City with evidence or documentation that LPC West has secured such equity or debt financing as is sufficient to develop and construct the Improvements on the Parcel or Parcels that are the subject of the applicable Closing.

2.1.1.10 *Recording of CC&Rs.* The CC&Rs have been recorded against the Parcel or Parcels that are the subject of the Closing.

2.1.2 Conditions Precedent to LPC West's Obligation to Close on a Parcel. Notwithstanding anything in this Agreement to the contrary, LPC West's obligation to Close on any Parcel is subject to and contingent upon the satisfaction or waiver, as provided in Section 2.1.3, of the following Conditions Precedent, which are solely for the benefit of LPC West:

2.1.2.1 *No Default.* City shall not be in default of its obligations under this Agreement in any material respect and beyond any applicable cure period.

2.1.2.2 *Agreement on and City Council Approval of Ground Lease.* The Parties shall have agreed to, and City Council shall have duly reviewed and approved, the form of Ground Lease.

2.1.2.3 *City Council Approval of Affordable Housing Parcel Conveyance.* With respect to Parcel 3 (the Affordable Housing Parcel), City Council shall have duly approved the disposition and conveyance of the parcel pursuant to the requirements of the Vancouver Municipal Code

2.1.2.4 *Legal Lot.* City shall have caused the relevant Parcel to be created, either through one or more of a short plat, binding site plan, or boundary line adjustment, as a separate unit of land which complies with all requirements of state and local law to be considered a legal lot capable of being separately ground leased or conveyed, as applicable, and developed, all in accordance with Section 2.4.5 below (each a “**Legal Lot**”). The approval or approvals so creating the Parcel as a Legal Lot must be final and unappealable. The City shall use commercially reasonable efforts to create each Legal Lot by the date set forth in the Schedule of Performance. In furtherance of the foregoing, LPC West, at its expense, will cause a surveyor it selects to undertake the surveying work necessary to (a) determine the configuration of and depict each Parcel as a to-be-created Legal Lot, and (b) prepare the legal descriptions of each such to-be-created Legal Lot. LPC West will present the configuration of each Parcel as a to-be-created Legal Lot to the City for its review and approval, which approval the City shall not unreasonably withhold, condition or delay. Thereafter, the City, at no cost to LPC West, will process and complete the creation of the Legal Lots.

2.1.2.5 *Financing.* LPC West has secured to its satisfaction, as determined in its sole and absolute discretion, such equity or debt financing as is sufficient to develop and construct the Improvements on the Parcel or Parcels that are the subject of the applicable Closing.

2.1.2.6 *Permits and Approvals.* LPC West shall have received (or have ready to issue, subject only to the payment of fees) all final, non-appealable governmental approvals necessary for the development of the Component on the Parcel, including any necessary or desirable permits, licenses, permissions, consents, land use approvals, building permits, encroachment permits, plats, variances, conditional use requests, local improvement district approvals, and other approvals (collectively, the “**Approvals**”). City hereby grants to LPC West the right, and in City’s name as owner of the Property if so required, to, among other things, (a) enter into discussions and negotiations regarding the Property with all governmental authorities, and (b) apply for, prosecute, participate in, and cause to be issued and finally approved any and all Approvals. City agrees to reasonably cooperate with LPC West in seeking all such Approvals for the Improvements, including that City agrees, as owner of the Property, to sign any application form reasonably necessary to obtain the Approvals.

2.1.2.7 *Representations and Warranties.* All representations and warranties of City contained in any part of this Agreement shall be true and correct in all material respects as of the Closing Date.

2.1.2.8 *Closing Documents.* City shall have delivered to Escrow duly executed copies of the following documents for the relevant Parcel:

- (i) Ground Lease for each of Parcels 1, 2, 4 and 5;

(ii) Memorandum of Ground Lease in recordable form for each of Parcels 1, 2, 4 and 5;

(iii) With respect to Parcel 3 (the Affordable Housing Parcel) only, the documents described in Section 3.2.4;

(iv) Such affidavits and other documents as the Title company may reasonably request to issue the Title Policy for the relevant Parcel;

(v) Such other documents as may be reasonably required to effectuate the applicable Closing.

2.1.2.9 *Title Matters.*

(i) Title Company shall be irrevocably committed to issue, in the case of the ground leased Parcels, an ALTA Extended Coverage Leasehold Owner's Policy of Title Insurance, and in the case of Parcel 3 (the Affordable Housing Parcel), an ALTA Extended Coverage Owner's Policy of Title Insurance, to LPC West for insuring LPC West's leasehold or fee interest, as applicable, in the Parcel, and the cost of the relevant Component of the Improvements, and showing fee simple title to the Property vested in City, subject only to the Permitted Exceptions, and containing such endorsements as are required by LPC West or its lenders (the "**Title Policy**"). Any commitment for a loan policy in connection with a Closing shall be acceptable both to LPC West and to any lender that will provide financing for the Closing or for development of the Component on the Parcel.

(ii) City has terminated all easements, leases, licenses, and agreements related to the relevant Parcel, including parking easements, leases, licenses, and agreements, except to the extent that any of the foregoing are Permitted Exceptions.

2.1.2.10 *No Litigation.* There is no pending claim, dispute, or litigation that prevents or is likely to prevent LPC West from performing its obligations under this Agreement; *provided, however*, that a pending claim, dispute, or litigation arising from an event that constitutes a material breach of this Agreement by LPC West shall not excuse the performance by LPC West and shall not be a reason this Condition Precedent is unsatisfied.

2.1.2.11 *Material Adverse Change.* No material adverse change in the physical or legal condition of the Parcel has occurred or been discovered between the Effective Date and the Closing Date.

2.1.2.12 *Recording of CC&Rs on all Parcels.* The CC&Rs have been recorded against the Parcel or Parcels that are the subject of the Closing.

2.1.3 Failure or Waiver of Conditions Precedent. Notwithstanding anything to the contrary set forth in this Agreement, neither City nor LPC West is obligated to proceed with the lease or conveyance of any Parcel to LPC West unless the conditions set forth in this Section 2.1 (each, a "**Condition Precedent**," and collectively, the "**Conditions Precedent**") are satisfied or waived in writing by the benefitted Party prior to the Closing Date. Conditions Precedent for a Parcel shall be automatically deemed satisfied or waived upon the Parties' execution and recordation of the Deed or the Memorandum of Ground Lease for a Parcel, as applicable, even if a Party has not notified the other Party in writing of such satisfaction or waiver.

2.1.3.1 Elections upon Non-Satisfaction of Conditions. If any Condition Precedent is not fulfilled to the satisfaction of the benefited Party as of the applicable Closing Date, then such benefited Party may elect to:

(i) Terminate this Agreement in its entirety or only as to the Parcels that are the subject of the applicable Closing, by and effective upon written notice to the other Party;

(ii) Waive in writing the benefit of that Condition Precedent and proceed in accordance with the terms of this Agreement; or

(iii) Designate in writing a later date for the applicable Closing or Closings, to allow additional time for the condition to be satisfied, if the condition can be satisfied with additional time and the other Party agrees in writing to the later date. Notwithstanding the foregoing, if any of the Conditions Precedent set forth in Sections 2.1.2.1 (No Default), 2.1.2.4 (Legal Lot), 2.1.2.8 (Closing Documents), 2.1.2.9 (Title Matters), 2.1.2.10 (No Litigation), or 2.1.2.12 (Recording of CC&Rs on all Parcels) is not satisfied at a Closing, then LPC West may grant City additional time to satisfy such Condition(s) Precedent and allow for a later Closing by delivering written notice of such election prior to the Closing Date, in which event the both the Closing Date and the time period for commencement of construction under the Schedule of Performance for such Parcel or Parcels shall be increased by one day for each day of delay in City's satisfaction of the applicable Condition(s) Precedent.

2.1.3.2 Effect of Termination for Non-Satisfaction of Conditions Precedent to Closing. If this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to Closing and neither Party is in default under this Agreement pursuant to Section 7, then all rights and obligations of the Parties under this Agreement applicable to the Parcel or Parcels designated in the written notice shall terminate, other than: (a) City's obligation to refund to LPC West the Deposit; and (b) the obligation to cooperate in preparing, executing, and recording such documents as may be necessary or desirable to reflect the termination, or partial termination, of this Agreement as to all or some of the Parcels of the Property, in the real property records of the county in which the Property is located. If a Party is in default under this Agreement on the date this Agreement terminates or is partially terminated for non-satisfaction of the conditions precedent to a Closing, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

## 2.2 Intentionally Omitted.

2.3 Ground Lease Negotiations. LPC West and the City have agreed to use good faith efforts to agree on the form of ground lease for each of Parcels 1, 2, 4, and 5 within ninety (90) days of the Effective Date and that the form of ground lease shall contain the provisions set forth in Section 4.1 (each, a "**Ground Lease**"). The Parties agree that the Ground Lease for each Parcel shall be in substantially the form approved by City Council but may have differences, including provisions related to distinctive characteristics or circumstances of the Parcel or Component to be developed on the Parcel.

## 2.4 LPC West Due Diligence Contingency.

2.4.1 Property Information. To the extent not already provided to LPC West, within ten (10) calendar days of the Effective Date, City shall deliver to LPC West all information, documentation, and reports in City's possession or control pertaining to the Property, including, without limitation, the following (collectively, the "**Property Information**"): (a) all plans, drawings, specifications, soils reports, engineering and architectural studies, zoning studies or reports, hazardous waste studies, geotechnical

and seismic reports, soils reports, archeological studies, hydrology reports, wetland studies, topographical maps, boundary and ALTA surveys, environmental reports, traffic or other transportation studies, grading plans, and any other reports, studies, investigations, or other analyses relating to the Property; (b) copies of all contracts and agreements between City and City's consultants relating to the materials addressed in subsection (a); (c) all permits, entitlement documents, zoning agreements, agreements with any governmental entities, and notices from governmental entities, for the Property, and all correspondence related thereto; (d) any agreements affecting the Property; (e) property tax bills and any notices of tax assessments for the past five (5) years; and (f) any other documents reasonably related to development of the Improvements as may reasonably be requested by LPC West.

**2.4.2 LPC West Due Diligence Contingency.** LPC West shall have a period (the "**Due Diligence Period**") commencing on the Effective Date and continuing until the date that is thirty (30) 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, archeological investigations, 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, the Property Information, 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 2.4.2, and all other matters related to the suitability of the Property for LPC West's intended purposes, development, use, and investment and the financial feasibility thereof, all as determined by LPC West in its sole and absolute discretion (collectively, "**LPC West Due Diligence**"). All square footages, dimensions, and sizes (if any) in any materials furnished or made available by City are approximate. LPC West has been urged to independently verify all such information. LPC West has also been urged to conduct its own investigations regarding any impact the zoning of the Property and development regulations may have on LPC West's intended use of the Property. LPC West 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 City for such testing, which consent City will not unreasonably withhold, condition, or delay.

**2.4.3 Access.** LPC West may enter the Property at any time between the Effective Date and the Closing Date for a Parcel in accordance with the terms hereof. LPC West shall obtain City's prior written consent to any invasive testing, which consent shall not be unreasonably withheld, conditioned or delayed. LPC West shall be solely responsible for all costs of inspections and shall restore the Property to the same condition it was in prior to inspection or to a better condition. LPC West 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 LPC West, its agents, and representatives. This agreement to indemnify and defend City shall survive Closing or termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, LPC West shall have no liability or responsibility for any claim, costs (including attorney fees), loss, or liability arising out of or to the extent related to (a) pre-existing conditions on, at, under, or around the Property, or (b) the negligence or intentional acts of City or its agents, employees, or contractors.

**2.4.4 Due Diligence Period; LPC West Satisfaction.** If the LPC West Due Diligence is acceptable to LPC West in its sole and absolute discretion, LPC West may elect, by delivering written notice to City on or before 6:00 p.m. Pacific Time on the Due Diligence Expiration Date, to proceed with the transactions contemplated herein. For clarification, LPC West may choose not to give a notice of satisfaction with due

diligence during the Due Diligence Period for any or no reason whatsoever. If LPC West fails to timely notify City of its satisfaction with LPC West's Due Diligence, this Agreement shall terminate, except as to those provisions which explicitly survive a termination, and the Initial Deposit shall be deemed nonrefundable and released to City and the Additional Deposit shall immediately be returned to LPC West.

2.4.5 Legal Descriptions of Parcels. The Parties will agree upon the final legal descriptions of the Parcels, which final legal descriptions will generally reflect the locations, configurations and sizes shown on Exhibit A-2. As the parties move through the process of creating each Parcel as a Legal Lot in accordance with Section 2.1.2.4, City shall present to LPC West for its review and approval any and all changes to the location, configuration and size of any Parcel as shown on Exhibit A-2, which approval LPC West may withhold in its sole and absolute discretion. The final locations, configurations and sizes of the Parcels agreed upon by City and LPC West, if different than those attached as Exhibit A-2, will be attached to this Agreement as Schedule 2.4.5.

### **ARTICLE 3. DISPOSITION OF PROPERTY**

3.1 Ground Leases. Provided the Conditions Precedent in Article 2 have all been satisfied or waived by the applicable benefited Party, and in the case of Parcel 4, LPC West has exercised the Option, City shall ground lease to LPC West, and the LPC West shall ground lease from City, Parcels 1, 2, 4 and 5 of the Property pursuant to a Ground Lease for each such Parcel.

3.1.1 Construction and Staging Easement. Simultaneously with entering into the Ground Leases with respect to Parcels 1, 2 and 5 and the conveyance of Parcel 3, the City shall grant to LPC West temporary construction licenses and easements over City property, including Parcel 4, as reasonably necessary for LPC West to construct Improvements on Parcels 1, 2, 3 and 5. Such licenses and easements shall be in a form reasonably satisfactory to both the City and LPC West and shall include: (a) licenses for construction staging and trailers; (b) licenses for layback/laydown areas on Parcel 4; (c) easements to support construction cranes, including over City rights of way, once crane locations and the radii of crane jibs have been determined by LPC West; and (d) the right of access over and across City property, including the City Hall site.

3.2 Conveyance. Provided that the Conditions Precedent in Article 2 have all been satisfied or waived by the applicable benefited Party, City shall convey Parcel 3 to LPC West, or an entity of which LPC West is a partner or member, and LPC West shall purchase Parcel 3 from City by the Phase 1 Closing Date, all on the terms and conditions set forth in this Section 3.2 and in this Agreement.

3.2.1 Provided that Parcel 3 is used as affordable housing and that the conveyance complies with RCW 39.33.015 in all other respects, the purchase price for Parcel 3 is \$1.00. The purchase price of Parcel 3 shall be paid in cash on the Closing Date.

3.2.2 The conveyance of Parcel 3 by City to LPC West shall include the land comprising the Parcel, together with: (a) all rights, privileges, licenses, and easements appurtenant to the land owned by City, including, without limitation, all minerals, oil, and gas on and under the land, as well as development rights, air rights, and water rights related to the land, and any other easements, private rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the land; (b) all improvements, equipment, fixtures or other personal property of every kind located on the land, if any; and (c) any and all permits, warranties, development rights, intangible property and any other similar personal property assets owned by City with respect to the land and the improvements thereon.

3.2.3 City will convey Parcel 3 to LPC West pursuant to the Deed, subject only to the Permitted Exceptions and an affordable housing covenant no less than 50 years in duration together with such other terms and conditions are reasonably required to comply with RCW 39.33.015. City shall deliver possession of Parcel 3 to LPC West concurrently with the conveyance of title.

3.2.4 The Deed shall include a right of reversion in favor of the City which shall be triggered by LPC West's (a) conveyance of Parcel 3 to a third party (or an entity in which LPC West is a partner or member) (in each case, a "**Parcel 3 Transferee**") for a purchase price in excess of \$1.00, or (b) failure to commence construction within ninety (90) days following recordation of the Deed, and shall be exercised by the City providing written notice to LPC West. If triggered, the right of reversion shall be null and void if the City does not exercise it prior to the date LPC West commences construction on Parcel 3. Notwithstanding the foregoing, LPC West shall be entitled to reimbursement from the Parcel 3 Transferee of any and all out of pocket costs incurred in connection with the acquisition, due diligence, entitlement, and development of Parcel 3; provided, in no event shall LPC West receive more from the Parcel 3 Transferee than Parcel 3's pro rata share of LPC West's aggregate out of pocket costs incurred in connection with the acquisition, due diligence, entitlement, and development of Parcels 1, 2, 3, 4 and 5, together with any out of pocket costs incurred by LPC West solely with respect to Parcel 3.

3.2.5 City shall have delivered to Escrow the following funds and duly executed copies of the following documents on or before the Closing Date:

3.2.5.1 An original bargain and sale deed in the form attached hereto as Schedule 3.2.4.1 (the "**Deed**") and a Real Estate Excise Tax Affidavit with the Deed notarized;

3.2.5.2 an original Assignment of Intangibles, substantially in the form attached hereto Schedule 3.2.4.2;

3.2.5.3 An original non-foreign affidavit in compliance with Internal Revenue Code section 1445 and the Washington equivalent, if any;

3.2.5.4 Such funds by wire transfer, if any, as are necessary to pay City's share of closing costs and prorations;

3.2.5.5 Such affidavits and other documents as the Title Company may reasonably request to issue the Title Policy for Parcel 3; and

3.2.5.6 Such documents as the Escrow may require to establish the authority of City to complete the sale of Parcel 3 and to otherwise effectuate the transfer of Parcel 3 to LPC West.

3.2.6 On or before the Closing Date, LPC West shall deliver to Escrow the following:

3.2.6.1 Such funds (by wire transfer) as are necessary to complete the payment of the purchase price and to pay LPC West's share of closing costs and prorations; and

3.2.6.2 Such documents as the Escrow may require to establish the authority of LPC West to complete the purchase of Parcel 3 and to otherwise effectuate the transfer of Parcel 3 to LPC West.

### 3.3 Deposit.

3.3.1 Prior to the Effective Date, LPC West deposited with the CCRA, for the benefit of the City, the sum of One Hundred Thousand Dollars (\$100,000.00) as ENA fees, which funds shall be considered the **“Initial Deposit”** for purposes of this Agreement. Within three (3) Business Days following the Effective Date, LPC West shall deposit an additional amount equal to One Hundred Fifty Thousand Dollars (\$150,000.00) with Title Company, acting in its capacity as escrow agent (the **“Additional Deposit”** and together with the Initial Deposit, the **“Deposit”**).

3.3.2 Upon (a) the expiration of the Due Diligence Period in Section 2.4.2, (b) the agreement of the Parties on the form of Ground Lease and Remediation Plan pursuant to Sections 2.3 and 3.11 respectively, and (c) the approval of the public plaza design pursuant to Section 6.2.6 (the **“Contingency Deadline”**), and subject to Section 3.4.3.6, unless LPC West shall have terminated or shall be deemed to have terminated this Agreement, the Deposit shall be fully earned by City and shall be non-refundable to LPC West except as expressly set forth in this Agreement. If LPC West elects to or is deemed to have elected to terminate this Agreement prior to the Contingency Deadline, the Deposit shall be immediately refunded to LPC West, and the Parties shall owe each other no obligations except for those that expressly by their terms survive the termination of this Agreement.

3.3.3 At the first Closing on a Parcel or Parcels, except as provided below, an amount equal to the Initial Deposit shall be applied to the rent under any of the executed Ground Leases selected by LPC West and shall thereafter be governed by the terms and conditions of such Ground Lease. Once the Initial Deposit has been applied to rent under a Ground Lease, it shall no longer be refundable regardless of any provision of this Agreement to the contrary. The remainder of the Deposit (**“Remaining Deposit”**) shall apply to the rent due under the last Ground Lease for any Parcel used for other than primarily commercial office space (i.e., any Parcel other than Parcel 4). Notwithstanding the foregoing, the Initial Deposit shall not be applied as provided above until, and only so long as, construction is commenced on Parcel 3 within ninety (90) days following Closing on Parcel 3. If construction does not commence on Parcel 3 within ninety (90) days following Closing, the Initial Deposit shall be released to City, deemed nonrefundable, and not be applied to rent due under any Ground Lease.

### 3.4 Title and Survey.

3.4.1 Title Examination. Prior to the Effective Date, the Parties have preliminarily reviewed title and survey documents for the Property, and LPC West delivered a title objection letter to City dated August 2, 2022. City provided an initial response to LPC West’s title objection letter on November 15, 2022 (the **“City Letter”**), which addressed some but not all title matters. As of the Effective Date, City has delivered or caused to be delivered to LPC West an updated preliminary leasehold report for the Property reflecting the resolution of some of the title issues set forth in the City’s Letter (the **“Title Commitment”**). Within ten (10) days of the Effective Date, City will provide further responses to the title matters that were not fully addressed or resolved in either the City’s Letter or the Title Commitment. The Title Commitment will include, to the extent available, a legible copy of each document referenced in the Title Commitment as an exception to title (each, an **“Exception”**). LPC West, at its cost, may obtain an updated ALTA survey of the Property (**“Survey”**) within twenty (20) days after the Effective Date.

3.4.2 Approval. No later than thirty (30) days following the Effective Date (the **“Title Exam Deadline”**), LPC West shall notify City in writing of LPC West’s remaining objections to any matters shown in the Title Commitment and on the Survey (**“LPC Title/Survey Notice”**). City shall have ten (10) days



following receipt of the LPC Title/Survey Notice to determine whether City intends to address or resolve such objections and shall notify LPC West of such determination within such 10-day period ("**City Title/Survey Notice**"). LPC West shall have fifteen (15) days following receipt of the City Title/Survey Notice to elect to terminate the Agreement and receive the return of the Deposit. If LPC West fails to terminate the Agreement in accordance with the preceding sentence, any item(s) contained in the Title Commitment and on the Survey which City has not elected to address or resolve in accordance with the City Title/Survey Notice shall be automatically and irrevocably be deemed a Permitted Exception unless such item constitutes a Must Remove Exception.

### 3.4.3 Title Update; Title Objections; Cure of Title Objections.

3.4.3.1 If, following the Title Exam Deadline, the Title Commitment for the entire Property 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**"), LPC West shall have until the date (the "**Updated Title Exam Deadline**") which is fifteen (15) Business Days after LPC West's receipt of such Title Update, to notify City in writing of LPC West's objections to any matters shown in the Title Update. Any item(s) contained in a Title Update to which LPC West 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.

3.4.3.2 Within ten (10) days after City notifies LPC West that it has created any Parcel as a Legal Lot, City shall deliver or cause to be delivered to LPC West an updated preliminary leasehold report for each such Parcel (each, a "**Parcel-Specific Title Commitment**") from Title Company, and, to the extent available, a legible copy of each document referenced in the Parcel-Specific Title Commitment as an exception to title. LPC West, at its cost, may obtain an updated ALTA survey of the Parcel (each, a "**Parcel-Specific Survey**") within thirty (30) days after receipt of the Parcel-Specific Title Commitment. If any Parcel-Specific Title Commitment or Parcel-Specific Survey discloses an exception to title 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 "**Parcel-Specific New Exception**"), LPC West shall have until the date (the "**Parcel-Specific Title Exam Deadline**") which is fifteen (15) Business Days after LPC West's receipt of such Parcel-Specific Title Commitment and a Parcel Specific Survey, to notify City in writing of LPC West's objections to any matters shown in the Parcel-Specific Title Commitment, the Parcel Specific Survey, or both. Any item(s) contained in a Parcel-Specific Title Commitment or on the Parcel Specific Survey to which LPC West does not timely object prior to the applicable Parcel-Specific Title Exam Deadline shall be automatically and irrevocably deemed a Permitted Exception unless such item constitutes a Must Remove Exception.

3.4.3.3 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 for any Parcel regardless of whether objected to by LPC West as provided above: (a) any judgment liens against City; (b) any mechanics liens for work performed or requested by or on behalf of City; (d) any other monetary encumbrances which can be satisfied and released by the payment of money; and (e) any Exception created voluntarily by City after the effective date of the Title Commitment, unless LPC West has approved of such Exception in writing (collectively, the "**Must Remove Exceptions**").

3.4.3.4 If LPC West shall timely notify City of objections to Exceptions shown in the Title Commitment, Survey, any Title Update, any Parcel-Specific Title Commitment, or any Parcel-Specific

Survey prior to the applicable deadline, City shall have the right, but not the obligation, to cure such objections. Within thirty (30) days after receipt of the applicable notice of objections from LPC West (whether to the Title Commitment, Survey, any Title Update, any Parcel-Specific Title Commitment, or any Parcel-Specific Survey), City shall notify LPC West in writing whether City elects to attempt to cure any or all of such objections (the “**City’s Cure Notice**”). If City elects to cure, City shall have until the applicable Closing Date to remove, satisfy, or cure the same. Any exception objected to by LPC West shall be deemed cured if it is removed as an exception in the Title Policy for the relevant Parcel or Parcels (including, through the posting of a bond) or if Title Company issues an endorsement insuring over such exception in a form reasonably acceptable to LPC West, which benefits not only LPC West but its successor and assigns who acquire an interest in such Parcel or Parcels.

3.4.3.5 If City: (a) elects not to cure any matters properly objected to by LPC West in accordance with this Section 3.4.3; (b) is unable to effect a cure of those objections which it elected to cure prior to the Closing and so notifies LPC West in writing; or (c) fails to respond to LPC West’s notice within said thirty (30) day period (which shall be deemed City’s election to not cure), then LPC West shall have the following options to be exercised by LPC West in its sole and absolute discretion: (x) to ground lease the Parcel or Parcels subject to the those uncured objections, in which case such uncured objections shall be automatically and irrevocably deemed a Permitted Exception unless such item constitutes a Must Remove Exception, or (y) to terminate (or partially terminate) this Agreement as to one or more Parcels by sending written notice thereof to City, and upon delivery of such notice of termination, this Agreement shall terminate as to that Parcel or Parcels, and thereafter neither Party hereto shall have any further rights, obligations, or liabilities hereunder related to that Parcel or Parcels, except to the extent that any right, obligation, or liability set forth herein expressly survives termination of this Agreement.

3.4.3.6 Within five (5) Business Days after receipt of City’s Cure Notice (or if no notice is given, within five (5) Business Days after expiration of the five (5) day period for City to provide the City’s Cure Notice) LPC West shall notify City in writing whether LPC West shall elect to accept the conveyance under clause (x) or to terminate this Agreement under clause (y) of Section 3.4.3.5 above. LPC West’s failure to notify City of termination of this Agreement within such five (5) Business Day period shall be deemed to be an election under clause (y) of Section 3.4.3.5 above to terminate this Agreement as to the Parcel or Parcels affected by the relevant exception to title. Within two (2) Business Days of any such termination or deemed termination, the Deposit shall be returned to LPC West.

3.4.4 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 LPC West 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 by this Agreement or unless City elects to cure under this Section 3.4.

### 3.5 Covenants of City Prior to Closings.

3.5.1 As to each Parcel, 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:

3.5.1.1 Take such actions as are required to cause each Parcel to be a separate Legal Lot;

3.5.1.2 Maintain existing levels and types of liability insurance coverage for each Parcel, including through the City's self-insurance program;

3.5.1.3 Not permit or suffer to exist any encumbrance, charge, or lien to be placed or claimed upon any Parcel unless such encumbrance, charge, or lien has been approved in writing by LPC West;

3.5.1.4 Cause all leases, tenancies, and other occupancy agreements existing as of the Effective Date related to any portion of the Property to be terminated as of the Closing Date for the relevant Parcel;

3.5.1.5 Not enter into any new contracts, leases, or other occupancy agreements affecting the Property which will extend past the Closing Date for the relevant Parcel, or amend any current contracts, leases, or occupancy agreements affecting the Property, without the prior written consent of LPC West, which consent may be withheld in LPC West's sole and absolute discretion;

3.5.1.6 Maintain the Property and keep the Property in substantially the same condition on the Closing Date for each Parcel as on the Effective Date, normal wear and tear and casualty or condemnation excepted;

3.5.1.7 Not sell, mortgage, pledge, hypothecate, or otherwise transfer or dispose of all or any part of the Property or any interest therein;

3.5.1.8 Not enter into or solicit any agreement granting to any persons or entity any option or other right to purchase or ground lease the Property or any portion thereof;

3.5.1.9 Not voluntarily take any action that will render any of the representations of City set forth in Section 7.1 untrue in any material respect;

3.5.1.10 Comply with all laws applicable to the Property, or the use or occupancy thereof, or any operations or activities therein or thereon;

3.5.1.11 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

3.5.1.12 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 LPC West after Closing on any Parcel.

3.5.2 The City acknowledges and agrees that (a) a generator (the "**Generator**") and geothermal well (the "**Well**") exist on Parcel 1 and serve City Hall, and (b) both the Generator and Well must be removed from Parcel 1 to allow for development of Improvements on Parcel 1. The City agrees to remove the Generator from Parcel 1 and to disconnect and otherwise discontinue use of the Well on Parcel 1 on or before the date set forth in the Schedule of Performance. If the City fails to timely remove the Generator, disconnect from and discontinue use of the Well, or both, by the date set forth in the Schedule of Performance, then LPC West, at its election in its sole and absolute discretion, may decommission, demolish, destroy, and/or remove the Generator, the Well, or both from Parcel 1, as applicable, and the City hereby releases LPC West and its members, managers, officers, directors, shareholders, partners,

employees, contractors and agents from any and all liability and responsibility whatsoever arising from or related to such decommissioning, demolition, destruction, and/or removal.

### 3.6 Closing Dates.

3.6.1 The Closing for Parcels 1, 2, 3 and 5 shall occur collectively and simultaneously on a date mutually selected by the Parties in writing (the “**Phase 1 Closing Date**”), but in no event later than the date which is thirty-three (33) months after the Effective Date of this Agreement (the “**Phase 1 Outside Closing Date**”). In the event of failure of the Condition Precedent related to financing set forth in Section 2.1.2.5, LPC West may extend the Phase 1 Outside Closing Date for a period of up to ninety (90) days, provided that prior to the Phase 1 Outside Closing Date, LPC West has given written notice to the City of the need for the extension and the desired length of time of the extension, and has made at least three (3) attempts to schedule a meeting with the Executive Director of the CCRA to discuss LPC West’s efforts to obtain equity and debt financing and the challenges therewith. Prior to the expiration of the extended Phase 1 Outside Closing Date, the City agrees to negotiate in good faith to further extend the Phase 1 Outside Closing Date to allow for the Condition Precedent related to financing set forth in Section 2.1.2.5 to be met. Additionally, the Phase 1 Outside Closing Date shall be extended as set forth in Section 2.1.3.1(iii), as a result of failure of one or more Conditions Precedent, other than the Condition Precedent set forth in Section 2.1.2.5.

3.6.2 In the event that LPC West exercises the Option to ground lease Parcel 4 pursuant to Section 3.12, the Closing for Parcel 4 shall occur on a date mutually selected by the parties in writing, but in no event later than the date which is three (3) months after the date that LPC West provides notice to the City of its intent to exercise the option to ground lease Parcel 4.

3.7 Condition of Title. On the Closing Date, City shall deliver possession of the relevant Parcel to LPC West subject only to the following (the “**Permitted Exceptions**”):

3.7.1 applicable building and zoning laws and regulations;

3.7.2 items deemed a Permitted Exception pursuant to the title review processes in Section 3.4 above; and

3.7.3 any documents which are required by this Agreement to be recorded, including the Memorandum of Lease for each of Parcels 1, 2, 4 and 5.

### 3.8 Condition of Property.

3.8.1 “AS IS” CONVEYANCE. LPC WEST SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT IS GROUND LEASING EACH PARCEL ON AN “AS IS WITH ALL FAULTS” BASIS AND THAT LPC WEST IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 7 AND THE RIGHT TO REIMBURSEMENT PURSUANT TO SECTION 3.11 AND THOSE IN THE GROUND LEASE FOR A PARCEL, 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. LPC WEST AFFIRMS THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF CITY IN THIS AGREEMENT AND THOSE IN THE GROUND LEASE FOR A PARCEL, LPC WEST HAS NOT RELIED ON THE SKILL OR JUDGMENT OF CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES, OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF CITY IN THIS AGREEMENT AND THOSE IN THE GROUND LEASE FOR A PARCEL, LPC WEST 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). LPC WEST 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.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LPC WEST HEREBY EXPRESSLY WAIVES, RELEASES AND RELINQUISHES ANY AND ALL CLAIMS, CAUSES OF ACTION, RIGHTS AND REMEDIES LPC WEST MAY NOW OR HEREAFTER HAVE AGAINST CITY, ITS EMPLOYEES OR MEMBERS OF ITS CITY COUNCIL, WHETHER KNOWN OR UNKNOWN, UNDER ANY ENVIRONMENTAL LAW(S), OR COMMON LAW, IN EQUITY OR OTHERWISE, WITH RESPECT TO (1) ANY PAST, PRESENT OR FUTURE PRESENCE OR EXISTENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY (INCLUDING IN THE GROUNDWATER UNDERLYING THE PROPERTY) OR (2) ANY PAST PRESENT OR FUTURE VIOLATIONS OF ANY ENVIRONMENTAL LAWS; PROVIDED, HOWEVER, THAT THE FOREGOING RELEASE DOES NOT APPLY TO, AND SHALL NOT PROHIBIT LPC WEST FROM BRINGING A CLAIM BASED UPON, A BREACH OF ANY OF SECTIONS 3.5.1.3, 3.5.1.6, 3.5.1.12, 3.11, 7.1.3, 7.1.4, 7.1.6 and 7.1.9.

3.8.2 Survival. The terms and conditions of this Section 3.8 shall expressly survive the Closing of each Parcel. Neither City nor LPC West is liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, partner, member, manager, shareholder, employee, servant, or other person, except as expressly set forth in this Agreement and in any Ground Lease and the Deed. Each of LPC West and City has fully reviewed the disclaimers and waivers set forth in this Agreement with its respective counsel and understands the significance and effect thereof.

3.8.3 Acknowledgment. Each of LPC West and City acknowledges and agrees that: (a) 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; (b) the disclaimers and other agreements set forth herein are an integral part of this Agreement; and (c) neither City nor LPC West would have agreed to ground lease or convey the Property pursuant to this Agreement without the disclaimers and other agreements set forth in this Section 3.8.

3.8.4 LPC West's Release of City. LPC West, on behalf of itself and anyone claiming by, through or under LPC West hereby waives its right to recover from and fully and irrevocably releases City, its governing council, employees, officers, directors, representatives, and agents (the "**Released Parties**") from any and all claims, responsibility, or liability that LPC West 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: (a) 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; (b) any presence of Hazardous Materials; and (c) any information furnished by the Released Parties under or in connection with this Agreement except as set forth herein. Notwithstanding the generality of the foregoing, the foregoing waiver and release is subject to the City's obligations under Section 3.11 below and does not include any claims, responsibility, or liability to the extent related to the covenants set forth in Section 3.5 or to the representations and warranties of City in this Agreement and those in any Ground Lease or deed for a Parcel.

3.8.5 Scope of Release. The release set forth in Section 3.8.4 hereof includes claims of which LPC West is presently unaware or which LPC West does not presently suspect to exist which, if known by LPC West, would materially affect LPC West's release of the Released Parties. LPC West specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, LPC West agrees, represents, and warrants that LPC West realizes and acknowledges that factual matters now unknown to LPC West 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 LPC West further agrees, represents, and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that LPC West nevertheless hereby intends to release, discharge, and acquit City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses, and expenses, subject to the City's obligations under Section 3.11 below and except to the extent related to the representations and warranties of City in this Agreement and those in the Ground Lease or deed for a Parcel.

3.9 Costs of Escrow and Closing. City shall pay the cost for an ALTA standard leasehold title insurance policy for each of Parcels 1, 2, 4 and 5. LPC West shall pay the cost for the Title Policy above the cost of an ALTA standard leasehold title insurance policy, including the cost of extended coverage and endorsements. City shall pay the cost of any and all transfer or excise tax, the parties shall share equally escrow fees charged by the Title Company, and LPC West shall pay the Title Company's document recordation fees, except for recordation of documents needed to remove title exceptions that City has agreed to remove pursuant to the City's Cure Notice, which shall be paid by City. All other Closing costs shall be allocated in accordance with local custom. All items of income and expense attributable to the Parcel subject to the Closing, including any real estate taxes and assessments, shall be prorated as of 11:59 p.m. Pacific Time on the day prior to the Closing Date.

3.10 Real Estate Commissions. City and LPC West 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 LPC West 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 3.10 shall survive termination of this Agreement.

3.11 Soil Remediation Plan. City and LPC West acknowledge and agree that the Environmental Reports (defined below) reveal the presence of Hazardous Materials in, on, under and about the Property in the form of contaminated soils ("**Contaminated Soils**"). As a material inducement to LPC West to acquire and develop the Parcels in accordance with, this Agreement, City agrees to contribute to the cost of removal and/or remediation as further provided herein.

3.11.1 No later than sixty (60) days following the Effective Date, City, at its sole cost and expense, will prepare a contaminated media management plan to address Contaminated Soils existing on the Property, which plan will include items (a) through (f) of the definition of incremental costs as set forth in Section 3.11.5 ("**Remediation Plan**"). The City will provide a draft Remediation Plan to LPC West for its review and approval, which approval LPC West will not unreasonably withhold, condition or delay.

3.11.2 The Parties agree and intend the Remediation Plan to provide that: (a) Category 1 soils will be disposed of by LPC West at its cost and expense; (b) Category 2 and 3 soils will be placed by LPC West, at its cost and expense, on a site designated by the City in writing on or before the Phase 1 Closing Date within a ten (10) mile radius of the Property; and (c) City and LPC West will share incremental costs associated with the removal or remediation of Category 4 soils from each Parcel comprising the Property with the City paying ninety percent (90%) and LPC West paying ten percent (10%) of all such incremental costs; provided that the City's liability for such incremental costs shall not exceed two million four hundred thousand (\$2,400,000).

3.11.3 In disposing of soils from the Property, LPC West shall conform to the Remediation Plan. Any changes to the Remediation Plan must be pre-approved by the City, which approval the City will not unreasonably withhold, condition or delay. On or before the Phase 1 Closing Date, the City, at no cost to LPC West, shall (a) obtain any and all permits and other approvals necessary for the site to which LPC West will deliver the Category 2 and 3 soils to, and for the City to receive the Category 2 and 3 soils at, the designated site, and (b) receive, offload, stack, store, distribute, manage and maintain the soils at, on and about the designated site. LPC West's compliance with the Remediation Plan and delivery of the Category 2 and 3 soils to the designated site shall immediately and automatically result in a transfer of ownership and responsibility for such soils to the City, and LPC West shall have no further responsibility or liability for such soils whatsoever. If the City believes that LPC West has failed to comply with the Remediation Plan for purposes of this Section 3.11.3, then within thirty (30) days of LPC West's delivery of the Category 2 and 3 soils to the designated site, the City shall so notify LPC West in a writing that sets forth in detail the alleged noncompliance. Failure of the City to timely provide such notice shall be deemed the City's waiver of any and all allegations that LPC West failed to comply with the Remediation Plan with respect to the Category 2 and 3 soils delivered to the designated site.

3.11.4 The City will reimburse LPC West for its share of incremental costs within thirty (30) days of receipt from LPC West of documentation reasonably required by the City of the incremental costs actually incurred in accordance with the Remediation Plan. LPC West shall not submit for reimbursement of incremental costs more frequently than monthly. The applicable Ground Leases and purchase and sale

agreement for Parcel 3 shall provide that any environmental remediation shall be performed in accordance with the Remediation Plan.

3.11.5 As used in this Section 3.11, “incremental costs” means all costs that would not otherwise be incurred but for the existence of Category 4 soils, in, on, under and about the Property, including: (a) soil off-haul and disposal; (b) environmental testing of materials (including soil and groundwater) removed from the Property if and as required by applicable law or a disposal facility; (c) environmentally required materials and equipment such as demarcation fabric; (d) dust and track-out control; (e) management of soil piles; and (f) any specialty clothing needed for workers performing soil removal or other remediation work. In other words, “incremental costs” are costs and expenses in excess of costs that would be incurred by LPC West as a result of the existence of Category 1 soils in, on, under and about the Property, including in each cost category described in subsections (a) through (f) of this Section 3.11.

3.11.6 As used in this Section 3.11, “Category 1”, “Category 2”, “Category 3” and “Category 4” soils shall have the meaning given to such terms by the Washington State Department of Ecology.

3.12 LPC West Option for Parcel 4. From the Effective Date until the date that is thirty-three (33) months after the Effective Date (the “**Option Period**”), LPC West shall have the right to exercise an option to ground lease Parcel 4 (the “**Option**”) by giving written notice to the City prior to the expiration of the Option Period. In the event of failure of the Condition Precedent related to financing set forth in Section 2.1.2.5, LPC West may extend the expiration of the Option Period for a period of up to ninety (90) days, provided that prior to the expiration of the Option Period, LPC West has given written notice to the City of the need for the extension and the desired length of time of the extension, and has made at least three (3) attempts to schedule a meeting with the Executive Director of the CCRA to discuss LPC West’s efforts to obtain equity and debt financing and the challenges therewith. During the extended Option Period, the City agrees to negotiate in good faith to further extend the Option Period to allow for the Condition Precedent related to financing set forth in Section 2.1.2.5 to be met. Additionally, the Option Period shall be extended as set forth in Section 2.1.3.1(iii), as a result of failure of one or more Conditions Precedent, other than the Condition Precedent set forth in Section 2.1.2.5.

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

4.1 General Terms. The Ground Lease form to be used for Parcels 1,2,4 and 5 shall contain terms that substantially conform to the intent of the provisions in this Article 4 and such other customary and commercially reasonable terms of a long-term ground lease the Parties may agree upon. Accordingly, the Ground Lease form will:

4.1.1 Require LPC West to construct the agreed upon Component of the Improvements for the Parcel.

4.1.2 Have a term which begins at Closing and terminates no later than eighty (80) years thereafter, divided into an initial term of fifty (50) years with two (2) renewal terms of fifteen (15) years each, which renewal terms LPC West may exercise if LPC West is not in default of the Ground Lease at the time of renewal beyond any applicable notice and cure period.

4.1.3 State the amount of annual ground lease rent, which shall be calculated as follows:

4.1.3.1 For Parcels 2, 4 and 5, by multiplying the appraised value of the property (on a per square foot basis) commonly referred to by the Parties as “Block X” and depicted on Exhibit A-2



attached hereto (“**Block X**”) by the square footage of each such Parcel as set forth in the final plat or subdivision creating the Legal Lots (for each such Parcel, the “**Allocated Value**”), and then multiplying the Allocated Value by six percent (6%). As used in this Section 4.1.3.1, the “appraised value” means the value set forth in the February 28, 2023 appraisal prepared on behalf of the City by Colliers International Valuation & Advisory Services and prepared for Waterfront Gateway Land (Block X), as increased in accordance with Section 4.1.3.3 below.

4.1.3.2 For Parcel 1, by multiplying the appraised value of the property commonly referred to by the Parties as “Block Y” and depicted on Exhibit A-2 attached hereto (“**Block Y**”) by six percent (6%). As used in this Section 4.1.3.2, the “appraised value” means the value set forth in the February 28, 2023 appraisal prepared on behalf of the City by Colliers International Valuation & Advisory Services and prepared for Waterfront Gateway Land (Block Y), as increased in accordance with Section 4.1.3.3 below.

4.1.3.3 Rent shall be abated for a period of two years from the commencement date of each Ground Lease and shall be discounted in accordance with Schedule 4.1.3.3 attached this Agreement. Beginning on the Effective Date and continuing annually until the Closing for Parcels 1, 2, 4 and 5 and thereafter during the two-year rent abatement period, ground lease rent for each Parcel will be adjusted based on the change in the Consumer Price Index (Seattle-Tacoma-Bellevue, WA) from the prior twelve (12) months, with a floor of 2.5% and a cap of 5.5%. The Ground Lease will provide for a marking up of rent every twenty (20) years during the each Ground Lease term to the lesser of (a) fair market rental value, which shall be determined by a third-party appraisal that assumes existing usages and densities for each Parcel, and (b) ten percent (10%) more than Ground Lease rent paid during the immediately preceding year.

4.1.4 Provide that rent will be paid on a monthly schedule during the term of the Ground Lease.

4.1.5 Provide that City will provide access from a public street, utilities, and services to the Parcel.

4.1.6 Provide that the Ground Lease may be freely assigned or transferred by the tenant once the City has issued a Certificate of Occupancy for the Component.

## **ARTICLE 5. CONSTRUCTION OF IMPROVEMENTS**

5.1 Improvements to Conform to Design Renderings and Approvals. The Improvements to be constructed on each Parcel shall be designed and constructed substantially in accordance with the approved 100% Schematic Design Plans and Drawings attached as Exhibit B and will be constructed in a good and workmanlike manner and in compliance with Approvals granted by City in its regulatory capacity (as distinguished from its proprietary capacity as the owner of the Parcel and as a Party to this Agreement).

5.2 Commencement of Construction of Improvements. LPC West shall commence construction of Improvements on a Parcel no later than ninety (90) days after the Closing has occurred for such Parcel. As used in this Agreement, “**commence construction**” or “**commencement of construction**” and related phrases mean the date upon which the general contractor for a Component has commenced mobilization at the relevant Parcel. Subject to delay by Force Majeure, LPC West’s failure to timely commence construction of a Component shall constitute an event of default under the Ground Lease for that Parcel and shall entitle City to exercise its remedies under that Ground Lease.

### 5.3 Completion of the Improvements.

5.3.1 LPC West shall use commercially reasonable efforts to prosecute to completion the construction of Improvements on a Parcel by the date set forth in the Schedule of Performance (“**Required Completion Date**”), with “**completion of construction**” and related phrases meaning the date the City issues a Certificate of Occupancy for the relevant Improvement or Improvements. LPC West anticipates that completion of construction and the issuance of Certificates of Occupancy for Improvements within one or more Components will be phased. The Schedule of Performance will reflect such phasing. Subject to Force Majeure, LPC West’s failure to timely complete an Improvement on a Parcel shall constitute an event of default under the Ground Lease and entitle City to exercise its remedies under the Ground Lease or to exercise City’s rights under the Completion Guaranty.

5.3.2 The City and LPC West acknowledge and agree that archaeological artifacts have been discovered on the Property. If LPC West encounters archaeological artifacts on any portion of the Property, then any and all future deadlines in the Schedule of Performance shall be delayed on a day-for-day basis, commencing on the date of LPC West’s discovery of such artifacts and continuing as reasonably necessary for LPC West to handle, remove, and otherwise deal with such artifacts in compliance with all applicable Laws. Such period of delay shall be determined by LPC West in its reasonable discretion, provided that it is working diligently and in good faith to resolve all issues related to such artifacts and to continue with construction and development of the Property.

5.4 Progress Reports. From commencement of construction of Improvements on a Parcel until such time as LPC West has achieved completion of construction of Improvements on such Parcel, LPC West shall provide City with monthly progress reports regarding the status of the construction.

### 5.5 Construction Responsibilities.

5.5.1 City Not Responsible for Construction of Improvements. The City shall not be responsible for any aspect of LPC West’s conduct in connection with the construction of Improvements, including 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 City with reference to the construction of Improvements is solely for determining whether LPC West is properly discharging its obligations to City under this Agreement and should not be relied upon by LPC West or by any third parties as a warranty or representation by City as to the quality of the design or construction of the Improvements.

#### 5.5.2 Intentionally deleted.

5.5.3 Public Procurement Process. Some elements of the Improvements that are City funded in whole or in part or are available for public use may be subject to a competitive procurement process. More specifically, City contemplates that construction of the public plaza on non-ground leased property adjacent to City Hall will be subject to a competitive procurement process. The City will lead and manage the public bidding process.

5.6 Certificate of Completion. Promptly after completion of construction of Improvements on a Parcel and provided, that a Certificate of Occupancy has issued for the applicable Improvements, no later than five (5) Business Days after receipt of a written request from LPC West, City shall provide to LPC West a written instrument certifying the completion of the Improvements on the Parcel (the “**Certificate of**

**Completion**”). The Certificate of Completion shall be conclusive evidence that LPC West has fulfilled its obligations under this Agreement with respect to construction of Improvements on the applicable Parcel. The issuance of such Certificate of Completion shall be in addition to any approvals required to be obtained from City in its regulatory capacity and such issuance shall not constitute approval by City or otherwise the bind City in its regulatory capacity.

5.7 Interim Condition of Parcel 4. If LPC West has not commenced construction of Improvements on Parcel 4 by the date the vertical buildings on each of Parcel 1, 2, 3 and 5 have received Certificate of Occupancy, then LPC West shall lay grass as a temporary improvement to Parcel 4 prior to commencing construction of Parcel 4.

5.8 Entry by City.

5.8.1 LPC West shall permit City, through its officers, agents, or employees, to enter an Improvement on a Parcel at reasonable times during business hours after reasonable advance written notice and acceptance by LPC West (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 Component to determine that the same is in conformance with the requirements of this Agreement. Notwithstanding the foregoing, City shall not be permitted to interfere with LPC West’s operations at the applicable Parcel or Improvement or interfere with any tenant’s occupancy of the Parcel or Improvement, and the scheduling of any inspections shall take into account the timing and availability of a LPC West representative to attend such inspections and access to tenants’ premises pursuant to tenants’ rights under the Leases or otherwise. City’s inspections shall not involve any activities that penetrate into an Improvement or any portion thereof.

5.8.2 City shall immediately repair any damage to the Parcel or Improvements caused by City’s entry onto and inspections of the Parcel or Improvement. City hereby agrees to indemnify, defend, and hold LPC West, its managers, members, partners, officers, directors, employees, and agents free and harmless from and against any and all costs, losses, liabilities, damages and expenses, of any kind or nature whatsoever (including reasonable attorneys’ fees and costs actually incurred), arising out of damage to persons or property caused by or arising out of or resulting from the entry and/or the conduct of inspections upon a Parcel or Improvements by City, its officers, agents or employees. The foregoing obligations and indemnification shall survive the expiration or earlier termination of this Agreement.

5.8.3 LPC West acknowledges that City is under no obligation to supervise, inspect, or inform LPC West of the progress of construction or operations, and LPC West shall not rely upon City therefor. Any inspection by City during the construction is entirely for its purposes in determining whether LPC West is in compliance with this Agreement and is not for the purpose of determining or informing LPC West of the quality or suitability of construction. LPC West shall rely entirely upon its own supervision and inspection (or that provided by third parties) in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

5.9 Construction Coordination.

5.9.1 Access; Interference. LPC West shall comply in all material respects with all applicable City permitting and construction requirements related to street closures, construction disturbances, and the maintenance of access to neighboring facilities and businesses, including Vancouver City Hall, the Vancouver Convention Center, and Esther Short Park.

5.9.2 Construction Traffic. The Parties shall agree to a route for the construction truck traffic to utilize during construction, including keeping trucks off 6<sup>th</sup> Street through the eastern section of Downtown to the extent that reasonable ingress to and egress from the construction site remains without the use of 6<sup>th</sup> Street.

5.9.3 Construction Worker Parking. LPC West shall provide a construction worker parking plan to City for review and approval (such approval not to be unreasonably withheld, conditioned, or delayed) prior to commencement of construction. If LPC West's parking plans provides adequate parking for construction workers so that they are not utilizing on-street parking close to the construction site, then City shall have no ground to disapprove of such parking plan.

5.9.4 Construction Adjacent to BNSF Railway Berm. LPC West is responsible for obtaining any needed consents, approvals, or permissions from BNSF Railway to utilize areas adjacent to the railroad berm. A copy of such BNSF Railway consents, approvals, or permissions, if any, shall be provided in writing to City prior to start of the construction of the relevant Component.

5.9.5 Construction of City Hall Public Plaza. If the contractor hired by the City through the public bidding process for the construction of the public plaza adjacent to City Hall is different than the contractor hired by LPC West for construction of the Improvements, then the Parties shall work collaboratively and cooperatively to ensure alignment between the construction schedules of LPC West's general contractor and the City's contractor in an attempt to avoid construction conflicts and inefficiencies.

## **ARTICLE 6. DEVELOPMENT OF IMPROVEMENTS**

6.1 Elements of Improvements. The Improvements for the Property as a whole will include the following elements of a mixed-use development:

6.1.1 On Parcel 4, a minimum of 100,000 square feet of office uses for research or flexible tech in a mass timber/cross laminated timber (CLT) building;

6.1.2 On Parcels 1, 2 and 3, a combined minimum of 405 residential units, or 435 units in the event a height variance is granted, targeted to a variety of income levels, including 95 units on Parcel 3 that will be designated as affordable units with all 95 units at or below 60% of Portland Metro Area Median Income and as otherwise restricted by third parties providing equity and debt financing for the construction of the affordable housing project on Parcel 3;

6.1.3 On Parcels 1, 2, 4 and 5, a combined minimum of 35,000 square feet of retail/commercial, generally located on the ground floors or at street level. The retail adjacent to Esther Street and W. 6<sup>th</sup> Street and public plazas shall be sales and service orientated retail, dining, and entertainment establishments with a goal of promoting an active plaza environment.

6.1.4 On the entire Property, a minimum of 510 parking spaces, which are anticipated to be located in two (2) on-site parking garages, including a minimum of 90 spaces designated as public parking; and

6.1.5 Publicly accessible amenities and attractions including a series of variously sized, themed, programmed, and connected public plazas, placemaking features, landmark tower, pedestrian walkways,

parks and related areas scattered throughout the Property (total of approximately 80,000 square feet), collectively referred to as “**Open Space**”.

## 6.2 Public Benefits; Design Matters.

6.2.1 *Sustainability.* LPC West agrees to meet the sustainability objectives outlined in Schedule 6.2.1 attached hereto.

6.2.2 *Public art program.* The City and LPC West shall work collaboratively to identify locations throughout the district to install public art. LPC West shall solicit artwork through the City’s Public Art Program, which is subject to review by the City’s Culture, Arts and Heritage Commission.

6.2.3 *Workforce and business development strategy.* LPC West shall actively engage a diverse and local workforce to construct the Improvements required by this agreement by implementing the workforce and business development strategy set forth on Schedule 6.2.3 attached hereto.

6.2.4 *Development review and design considerations.* LPC West shall ensure that the construction of all Improvements referenced in Section 6.1 conforms to the applicable design guidelines, attached hereto as Schedule 6.2.4 (the “**Design Guidelines**”). LPC West shall submit to the Executive Director of CCRA for each vertical building to be constructed on a Parcel: (a) any material changes to the 100% Schematic Design Plans and Drawings attached to this Agreement as Exhibit B; (b) fifty percent (50%) design development drawings; (c) 100% design development drawings; and (d) the permit set of drawings and specifications. The City shall have ten (10) Business Days from receipt of the applicable drawings to review the same in its capacity as a Party to this Agreement (versus its regulatory capacity) for conformance to the Design Guidelines and to either approve such drawings or provide detailed written comments describing how the drawings do not conform to the Design Guidelines. If the City timely provides detailed written comments describing how the drawings do not conform to the Design Guidelines, LPC West shall promptly respond to such comments. A failure of City to timely respond to a submission of drawings by LPC West shall be deemed City approval thereof. City and LPC West shall work collaboratively to seek community engagement on the design prior to submitting designs to the City for regulatory review. Any material changes to the 100% Schematic Design Plans and Drawings attached to this Agreement shall be agreed upon by the City and LPC West prior to submission for regulatory review.

6.2.5 Intentionally deleted.

6.2.6 *Publicly accessible spaces, visitor amenities, and attraction requirements.*

6.2.6.1 LPC West shall design all the Open Space depicted in Schedule 6.2.6, including the public plaza adjacent to City Hall. Within thirty (30) days of the Effective Date, LPC West will submit to City staff, one hundred percent (100%) schematic design, a material palette and precedent imagery for the public plaza on Block Y and plaza adjacent to City Hall that conforms to the City Code and the City’s park development standards (the “**Initial Submittal**”). LPC West and the City will solicit community feedback on the proposed design through a minimum of two community events and online surveys, which feedback LPC West and City staff will discuss and consider in good faith. LPC West and City staff, will cause its landscape architect to make changes to the design of the public plazas mutually determined by LPC West and City staff, to be necessary or desirable based on community feedback. LPC West will then submit such updated design to City staff for approval, which City staff shall not unreasonably withhold, condition or delay. The agreed upon updated design will be presented to the Parks and Recreation Advisory Commission (“**PRAC**”) for its review and approval. The Parties aim to have

a public plaza design approved by City staff and the PRAC within one hundred and eighty (180) days of delivery by LPC West of the Initial Submittal. Subsequent to such approval by City staff and the PRAC under this Agreement, LPC West may pursue regulatory approvals from the City of the public plaza design.

6.2.6.2 Except for the public plaza adjacent to City Hall, which will not be ground leased to LPC West, LPC West shall construct the entire Open Space. LPC West shall be solely responsible for the operation, maintenance, and management of the plazas on Block X. The City will be responsible for permitting events and activities in the public plaza on Block Y consistent with City's established special event process detailed in Section 5 of City Code. LPC West and the City shall negotiate and execute an operations and maintenance cost-sharing agreement for the public plazas on Block Y after design documents for the plaza are 90% complete or at a point in time when the Parties agree that the level of design is sufficient to determine the level of maintenance that will be required.

6.2.7 *Makers Alley.* City and LPC West agree that uses on the eastern edge of the ground floor of Parcel 1 will have features that are anticipated to procure and support small businesses, which are important to the character of the Improvements to be developed on the Property. LPC West agrees to develop and manage Makers Alley in accordance with the Small Business Marketing and Outreach Plan attached to this Agreement as Schedule 6.2.7.

6.2.8 *Covenants, Conditions & Restrictions.* City and LPC West will work collaboratively and cooperatively to draft covenants, conditions and restrictions ("**CC&Rs**") that will be recorded against the Property on or before the first Closing under this Agreement, with a goal of recording the CC&Rs within ninety (90) days following creation of the Legal Lots. The CC&Rs are anticipated to include reciprocal easements among the Parcels, public access easements to privately owned amenities on the Property, restricted uses, and maintenance provisions.

6.2.9 *Tree Canopy.* As part of construction of the Components, LPC West shall plant trees in accordance with the tree plan attached to this Agreement as Schedule 6.2.9.

6.3 Signage. The Improvements will include signage in conformance with (a) the project character established in the 100% Schematic Design Plans and Drawings, (b) Design Guidelines, and (c) City Code.

#### 6.4 Regulatory Approvals.

6.4.1 Approval of Permits for Improvements. LPC West shall use commercially reasonable efforts to apply for and secure all necessary Approvals to construct the Improvements on the timeline set forth in the Schedule of Performance attached hereto as Exhibit D. Failure to secure Approvals by the target deadlines in the Schedule of Performance, which shall be subject to Force Majeure, shall not constitute an event of default of this Agreement.

6.4.2 City's Regulatory Discretion. LPC West acknowledges that execution of this Agreement by City does not constitute approval by City in its regulatory capacity (as distinguished from its proprietary capacity as the owner of the Property and as a Party to this Agreement) of any required or additional Approvals and in no way limits the discretion of City in the regulatory permit approval process. City, in its proprietary capacity, shall assist LPC West throughout any and all Approval processes but does not represent or warrant that its assistance will guarantee any regulatory approval. If City, acting in its regulatory capacity, will not approve any requirements or changes to the 100% Schematic Design Plans and Drawings or any other drawings reviewed by City under Section 5.2.4 above in its proprietary capacity

as a Party under this Agreement, then the City's decisions in its regulatory capacity shall govern and control.

6.5 Multi-Family Tax Exemption Program Conditional Approval. On June 30, 2023, LPC West, submitted to the City two complete applications for the City's limited multi-family tax exemption ("**MFTE**") program associated with the proposed development of new market rate multi-family residential housing to be constructed in two separate buildings on Parcels 1 and 2 of the Property (collectively the "**MFTE Projects**") as identified on Exhibit A-2 (Perimeter legal descriptions). Pursuant to City Code Section 3.22, LPC West has applied for two 8-year exemptions that, among other requirements of City Code Section 3.22, are contingent upon LPC West agreeing to provide a public benefit feature or combination of features with a combined documented value of at least 25% of the estimated value of the tax exemption. The City has determined that, if constructed as proposed and as detailed herein, LPC West will satisfy the MFTE approval criteria and that LPC West's agreement to provide stone stadium seating and wooden planter benches in the public plaza on Parcel 1 with a documented value of no less than 25% of the estimated value of the tax exemption will satisfy the public benefit requirement for a Final Certificate of Tax Exemption (the "**Public Benefit Feature**"). Pursuant to City Code Section 3.22.040(G), the City's Director of Economic Prosperity and Housing approved the application on July 3, 2023, subject to City Council approval of this Agreement. The following terms and conditions, which reflect the MFTE rules and regulations as of the date LPC West's application was deemed complete, will govern the agreement between the City and LPC West as it pertains to LPC West's eligibility for the subject multi-family tax exemption:

6.5.1 Following the creation of the Legal Lots, City shall issue LPC West Conditional Certificates of Acceptance of Tax Exemption for Parcels 1 and 2 that shall be effective as of the date of issuance.

6.5.2 LPC West shall construct the Public Benefit Feature in the public plaza on Parcel 1.

6.5.3 LPC West shall construct multi-family residential housing on Parcels 1 and 2 of the Property as identified in the 100% Schematic Design Plans and Drawings in Exhibit B or as otherwise authorized by the City. In no event shall construction of the MFTE Projects provide a combined total of fewer than 336 new permanent multi-family residential units.

6.5.4 LPC West shall construct the buildings according to the green building standards set forth in Schedule 6.2.1, which will satisfy the City's interim green building policy.

6.5.5 LPC West shall complete construction and receive a temporary certificate of occupancy for each building of multi-family residential housing to be constructed on Parcels 1 and 2 and complete construction of the Public Benefit Feature within three (3) years from the date the City issues the Conditional Certificate of Tax Exemption, or within any extension thereof granted by the City pursuant to City Code Section 3.22.

6.5.6 Upon completion of the MFTE Projects and upon issuance by the City of a temporary or permanent certificate of occupancy therefor, LPC West agrees to file with the City's Director of Economic Prosperity and Housing the following for each of the MFTE Projects:

6.5.6.1 A statement of expenditures made with respect to each multi-family housing unit and the total expenditures made with respect to the property that is subject to the MFTE program (Parcels 1 and 2);

6.5.6.2 A description of the completed work and a statement of qualifications for the exemption; and

6.5.6.3 A statement that the work was completed within the required three-year period or any authorized extension or any extension thereof.

6.5.7 City agrees, conditioned on LPC West's completion of the MFTE Projects and completion of the Public Benefit Feature, and on the LPC West's filing of the materials described in Paragraph 6 above, to file a Final Certificate of Tax Exemption for Parcels 1 and 2 with the Clark County Treasurer and Assessor.

6.5.8 LPC West agrees, within 30 days following the first anniversary of the City's filing of the Final Certificate of Tax Exemption, and each year thereafter for a period of eight years, to file a notarized declaration for each MFTE Project with the Director indicating the following:

6.5.8.1 A statement identifying the total number of occupied and vacant multi-family units receiving the MFTE property tax exemption;

6.5.8.2 A certification that the buildings continue to be in compliance with this Agreement, and the applicable requirements of City Code Chapter 3.22 and RCW Chapter 84.14;

6.5.8.3 A description of any improvements or changes to the MFTE Projects constructed after the issuance of the certificate of tax exemption; and

6.5.8.4 The total monthly rent for each unit within the MFTE Projects.

6.5.9 LPC West shall pay the City of Vancouver an annual monitoring fee of \$500 upon submission of the declaration referenced in Paragraph 8 during the exemption period.

6.5.10 LPC West agrees to maintain the MFTE Projects including all improvements in compliance with all applicable City codes and requirements.

6.5.11 LPC West agrees to maintain records supporting all information provided to the City and to make those records and the multi-family units within MFTE Projects available for inspection by the City during the exemption period. Failure to submit the annual declaration identified in Paragraph 8 or to maintain adequate records may result in the tax exemption being canceled.

6.5.12 The City may cancel the Final Certificates of Tax Exemption should LPC West, or its successors or assigns, fail to comply with any of the terms and conditions of this section. Cancellation of the Final Certificate of Tax Exemption may subject the LPC West to potential tax liability as further described in RCW 84.14

6.5.13 LPC West agrees that this Agreement is consistent with and subject to the Vancouver Multi-Family Housing Tax Exemption that it applied for, set forth at Vancouver Municipal Code, Chapter 3.22.

6.6 The provisions of this Section shall be incorporated into the relevant Ground Lease and shall survive expiration of this Agreement.



## ARTICLE 7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of City. City hereby makes the following representations and warranties to LPC West as of the Effective Date, upon each of which LPC West is entitled to rely and has relied, which representations and warranties shall be deemed re-made as of the Closing for each Parcel, subject to the qualifications and exceptions provided in this Agreement:

7.1.1 Organization and Authority. City is a Washington municipal corporation validly formed. City has the full right, power, and authority to enter into this Agreement, to ground lease all of the Parcels, 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. Other than City Council approval, 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 herein. This Agreement has been duly executed and delivered by City and is a valid and binding obligation of City, enforceable against City in accordance with its terms.

7.1.2 No Breach. The execution, delivery, and performance of this Agreement by City and the consummation of the transactions contemplated herein will not: (a) 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 LPC West's ability to ground lease the Property; (b) 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 (c) 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.

7.1.3 Litigation; Condemnation. There is no litigation, action, suit, nor any condemnation, environmental, zoning, or other government proceeding pending, or to City's knowledge, threatened, which may affect the Property, City's ability to perform its obligations under this Agreement, or LPC West's ability to develop the Improvements.

7.1.4 Hazardous Materials. To City's knowledge, except as disclosed in writing to LPC West in the environmental reports listed on Schedule 7.1.4 attached hereto (collectively, the "**Environmental Reports**"), City has received no written notice that the Property is in violation of any Hazardous Materials Laws, and there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, release, or production of Hazardous Materials, or other dangerous or toxic substances or solid wastes on the Property, except in compliance with all Hazardous Materials Laws, and City has not received notice of the existence or release of any Hazardous Materials on the Property.

7.1.5 Foreign Person. City is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

7.1.6 Compliance with Laws. To City's knowledge, and except as disclosed in writing to LPC West as part of the Property Information, the Property is in compliance with all applicable laws, rules, regulations, ordinances, and other governmental requirements, including environmental laws (collectively, "**Laws**"). City has not received or given any notice stating that the Property is in violation of any Laws.

7.1.7 Ownership. City is the legal and beneficial fee simple titleholder to the Property, and to the City's knowledge, the Property is free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, or judgments, except as disclosed by the Title Commitment.

7.1.8 Agreements. There are no leases, licenses, occupancy agreements or service contracts that affect the Property that are not terminable at the Closing of each Parcel, and, except as disclosed in the Title Commitment, there are no options to purchase the Property or rights of first refusal to purchase the Property.

7.1.9 Material Defaults. As of the Effective Date, there are no material defaults by City under this Agreement or to City's knowledge, events that with the passage of time would constitute a material default of City under this Agreement.

7.2 City's Knowledge. The term "**City's knowledge**" or any reference thereto shall mean and apply to the actual knowledge of the managerial and supervisory personnel of the City having responsibility for the Property or the Improvements. The foregoing personnel are acting for and on behalf of the City and in a capacity as an executive or employee of the City and are in no manner expressly or impliedly making any representations or warranties in an individual capacity. LPC West waives any right to sue or to seek any personal judgment or claim against any such individual.

7.3 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 with respect to each Parcel for a period of twelve (12) months from the closing of such Parcel (the "**Survival Period**"). From and after the Closing of each Parcel and until the end of the Survival Period, City shall indemnify, defend, and hold harmless LPC West, and each of LPC West's members, managers, employees, agents, successors, and assigns ("**LPC West 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 LPC West shall incur or suffer as a result of, or that arise, result from, or relate to any intentional or negligent material breach of any of City's representations, warranties, or covenants under this Agreement with respect to a particular Parcel.

7.4 Limits on LPC West's Claims Alleging Breach of Representations or Warranties or any other Claims. Notwithstanding any term, condition or provision in this Agreement to the contrary, express or implied, in the event the Closing occurs and LPC West receives possession of the Property, LPC West hereby expressly waives, relinquishes and releases any right or remedy available to LPC West, at law, in equity or under this Agreement, to make a claim against City for damages that LPC West may incur, or to rescind this Agreement and the transactions contemplated hereby, as the result of any breach by City of any provision of this Agreement or any of City's representations or warranties contained in Section 7.1 being untrue, inaccurate or incorrect if (a) LPC West had actual knowledge that such representation or warranty was untrue, inaccurate or incorrect at the time of the Closing and LPC West nevertheless permitted Closing to occur and the Deed or Memorandum of Ground Lease, as applicable, to be recorded, or (b) LPC West's damages and losses, if any, as a result of such representation(s) and/or warranty(ies) being untrue, inaccurate or incorrect are, in the aggregate, less than fifty thousand dollars (\$50,000.00), which amount is merely for purposes of setting a threshold for making claims and does not exempt City as to any portion of any amount for which it is liable. Notwithstanding anything contained herein or in this Agreement to the contrary, if the Closing has occurred and if LPC West has not waived, relinquished and released all rights or remedies available to it at law, in equity or otherwise as provided hereunder, the total aggregate

liability of City arising pursuant to or in connection with City's covenants, agreements, representations, warranties, or other obligations (whether express or implied) set forth in this Agreement, including the exhibits attached hereto, shall not exceed two hundred thousand dollars (\$200,000.00) per Parcel or one million dollars (\$1,000,000.00) in the aggregate. LPC West acknowledges and agrees that the limits and restrictions upon any claim by LPC West as set forth in this Section have been specifically negotiated and agreed upon by and between the Parties and that City would not be willing to enter into this Agreement without LPC West's agreement to these restrictions and that the same are therefore binding and effective upon LPC West and its successors and assigns. All of the provisions of this Section will survive the Closing.

7.5 Representations and Warranties of LPC West. LPC West hereby represents and warrants to City:

7.5.1 ERISA. LPC West is not financing the Ground Leases or construction of Improvements on the Property with the assets of an employee benefit plan as defined in Section 3(3) of ERISA.

7.5.2 Organization and Authority. LPC West has been duly organized or formed and is validly existing under the laws of Texas. LPC West has the full right, power, and authority to enter into this Agreement, to ground lease the Parcels as provided in this Agreement, and to carry out LPC West's obligations hereunder, and all requisite action necessary to authorize LPC West 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 LPC West is authorized to do so, and this Agreement is enforceable against LPC West in accordance with its terms, subject to bankruptcy, insolvency, and similar laws.

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

7.5.4 Patriot Act and OFAC Compliance. Neither LPC West nor, to LPC West's knowledge, any individual or entity having any interest in LPC West 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.

7.6 LPC West's Knowledge. The term "**LPC West's knowledge**" or any reference thereto shall mean the actual knowledge of Patrick Gilligan and Alex Aigner, without duty of inquiry. The named individuals are acting for and on behalf of LPC West and in a capacity as a principal, executive, officer or employee of LPC West or one more of LPC West's affiliates and are in no manner expressly or impliedly making any representations or warranties in an individual capacity. The City waives any right to sue or to seek any personal judgment or claim against any named individual.

7.7 Survival of LPC West's Representations and Warranties. LPC West's liability with respect to the representations and warranties of LPC West set forth in this Agreement shall survive the Closing Date of the last Parcel for a period of twelve (12) months.

## ARTICLE 8. DEFAULT AND REMEDIES

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

8.2 Default by LPC West. If LPC West shall materially default in the performance of any of its obligations to be performed on or before the Closing Date and such default shall continue for thirty (30) days after written notice to LPC West, City, as its sole and exclusive remedy, may terminate this Agreement and receive the Deposit (to the extent not applied to rent due under the Ground Leases) 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. If a material default by LPC West cannot reasonably be cured within a period of thirty (30) days, no default shall occur if LPC West commences the cure of the breach within thirty (30) days after LPC West receives written notice from City and thereafter diligently prosecutes such cure to completion.

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 LPC WEST, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT TO CONSUMMATE THE GROUND LEASE CONTEMPLATED BY THIS AGREEMENT ON THE PART OF LPC WEST. 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 \_\_\_\_\_                      LPC West \_\_\_\_\_

Nothing contained in this Section 8.2 shall limit or prevent City from enforcing (a) any indemnity obligation of LPC West under this Agreement or preclude City from obtaining a damage award in connection therewith, or (b) LPC West's other obligations and liabilities which survive a termination of this Agreement other than entering into the Ground Lease.

8.3 Default by City. If City shall materially default in the performance of any of its obligations to be performed on or before the Closing Date and such default shall continue for thirty (30) days after written notice to City, LPC West shall be entitled, as its sole and exclusive to: (a) terminate this Agreement, in which event (I) the Deposit (to the extent not applied to rent due under the Ground Leases) shall be promptly returned to LPC West and (II) all other rights and obligations of City and LPC West hereunder (except those set forth herein which expressly survive a termination of this Agreement) shall terminate immediately; or (b) to waive such matter or condition and proceed to Closing with no change to the agreed upon ground lease terms. Notwithstanding the preceding sentence, if, at any 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, LPC West shall have, in lieu of LPC West'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, LPC West'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 the date that is sixty (60) days following the date the Closing

should have occurred, failing which, LPC West 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 LPC West files a suit to enforce the Closing Obligations by specific performance, LPC West shall accept the Property from City subject only to the Permitted Exceptions, and the City shall convey the Property to LPC West in compliance with all terms of this Agreement (other than the Closing Date). Notwithstanding anything to the contrary set forth in this Agreement, if all Conditions Precedent to City's obligations under this Agreement have been waived or satisfied, if City intentionally fails to Close, and if the remedy of specific performance is not available to LPC West as a practical matter (e.g., City has conveyed one or more Parcels to a third party), then LPC West may pursue any and remedies available to it in law and equity, including an award of money damages. Other than as expressly provided herein, LPC West 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 City in entering into this Agreement and shall survive the termination or expiration of this Agreement.

## ARTICLE 9. CASUALTY AND CONDEMNATION

9.1 Condemnation. If the Parcels, or any part thereof, are or become the subject of a condemnation proceeding before the Closing of a Parcel, then LPC West may elect either to (a) terminate this Agreement as to the Parcel or Parcels affected, in which event all rights and obligations of the Parties hereunder shall cease and the Deposit (to the extent not applied to rent due under the first Ground Lease) shall be returned to LPC West, or (b) proceed to consummate the Closing for such Parcel or Parcels, in which event the Parties agree that the rent under the Ground Lease shall be reduced proportionately to the reduction in the size of the Parcel or Parcels and shall be reduced by the total of any awards or other proceeds received by City at or before the Closing Date with respect to any such condemnation proceeding. If LPC West elects to close and the award or other proceeds have not been received by City on or before the Closing Date, then, at the Closing, City shall assign to LPC West all rights of City in and to any awards or other proceeds payable by reason of any such condemnation proceeding. City agrees to notify LPC West in writing of any condemnation proceedings within five (5) days after City learns of the same. Damage and Destruction. If, prior to the Closing Date for any Parcel, any part of the Parcel is destroyed or suffers material damage affecting LPC West's intended use, as determined by LPC West its sole and absolute discretion, LPC West shall have the right, exercisable by giving written notice of such decision to City within thirty (30) days after receiving written notice of such damage or destruction, to terminate this Agreement, in which event the Deposit (to the extent not applied to rent due under the first Ground Lease) shall be returned to LPC West and all rights and obligations of the Parties hereunder shall cease. If LPC West does not timely elect to terminate this Agreement, all insurance and condemnation proceeds payable to City shall be paid or assigned to LPC West upon the Closing. **MORTGAGEE PROTECTION**

10.1 Effect of Revesting on Mortgages. With respect to City's reversionary rights on Parcel 3, City agrees to enter into one or more commercially reasonable agreements with a Mortgagee providing a loan for the development of Parcel 3, providing for, among other things, Mortgagee cure rights with respect to a failure to commence construction within ninety (90) days following the applicable Closing Date; provided that there shall be no Mortgagee cure rights in the event that LPC West transfers Parcel 3 in violation of Section 3.2.4.

10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or any portion thereof or to guarantee such construction or completion; *provided, however,* that nothing in this Agreement shall be

deemed or construed to permit or authorize any such Mortgagee, or any owner of the Development whose title thereto is acquired by foreclosure, trustee sale or otherwise, to devote that Development to any uses, or to construct any improvements thereon, other than the Improvements contemplated in this Agreement.

10.3 Copy of Notice of Default to Mortgagee. If City delivers any notice or demand to LPC West with respect to any breach of or default by LPC West in its obligations or covenants under this Agreement, City shall at the same time send a copy of such notice or demand to each Mortgagee at the last address of such holder shown in the records of City and if no such address is shown in City's records, then as show in any Mortgage of record.

10.4 Mortgagee's Options to Cure Defaults. After any default in or breach of this Agreement by LPC West where LPC West fails to cure or remedy said default or breach, then each Mortgagee may, at its option, cure or remedy such breach or default within one hundred eighty (180) days after passage of the latest date for LPC West's cure of the default, and, if permitted by its loan documents, add the cost thereof to the Mortgage debt and the lien of its Mortgage. If the breach or default is with respect to construction of the Improvements, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the Improvements, provided that the Mortgagee notifies City in writing of its intention to complete the Improvements, or portion thereof. Any Mortgagee who properly completes Improvements on a Parcel shall be entitled to issuance of a Certificate of Completion, following the procedures set forth in Section 5.6.

10.5 Amendments to Agreement Requested by Mortgagee. City shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to or investment in LPC West secured by a security interest in a Component or Parcel or a portion thereof, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of City hereunder or City's interest in the Parcel. **GENERAL PROVISIONS**

11.1 Term. This Agreement shall be effective as of the Effective Date and shall terminate upon the earliest of: (a) a Party giving a notice of termination in accordance with any provision of this Agreement; (b) the mutual agreement of the Parties in writing to terminate this Agreement; and (c) the issuance of a Certificate of Completion for all Components on all Parcels.

11.2 Notices, Demands, and Communications. Any notice, demand, or notice which either Party desires or may be required to make or deliver to the other pursuant to this Agreement shall be in writing and may be delivered, with all applicable delivery and postage charges prepaid, by: (a) personal delivery or messenger; (b) nationally recognized overnight courier service; (c) certified mail through the United States Postal Service, return receipt requested; or (d) e-mail, if simultaneously sent by another means allowed hereunder, and addressed as follows:

City:	City of Vancouver PO Box 1995 Vancouver, WA 98668-1995 Attn: Patrick Quinton Email: patrick.quinton@cityofvancouver.us
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With a Copy to:	City of Vancouver
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PO Box 1995  
Vancouver, WA 98668-1995  
Attn: City Attorney's Office  
Email: taylor.hallvik@cityofvancouver.us

And to: Pacifica Law Group LLP  
1191 Second Avenue, Suite 2000  
Seattle, Washington 98101  
Attn: Gerry Johnson  
Email: Gerry.johnson@pacificallawgroup.com

LPC West: LPC West, Inc.  
1201 Third Avenue, Floor 22  
Seattle, Washington 98101  
Attn: Patrick Gilligan  
Email: pgilligan@lpc.com

With a Copy to: Radler White Parks & Alexander LLP  
Attn: Dina Alexander  
111 SW Columbia Street, Suite 700  
Portland, OR 97201  
Email: dalexander@radlerwhite.com

Notices shall be deemed received by the addressee upon the earlier of actual delivery or refusal of a Party to accept delivery thereof; provided that notices sent by email shall be deemed given on the date received if and only if delivered prior to 6:00 p.m. Pacific Time and if simultaneously sent by another means allowed hereunder. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision. Notices may be given by counsel to a Party on behalf of such Party.

11.3 Confidentiality. City agrees to keep financial information and other proprietary information (such as, by way of example, potential tenant information), that LPC West labels "Confidential" ("**Confidential Information**") confidential, except for public records and open meeting requirements imposed by law on City. Notwithstanding the foregoing, City shall have the right to make disclosures of Confidential Information to City's counsel, City officers, employees, elected officials, agents, and independent contractors who have a need to know such Confidential Information in order to perform their responsibilities under or in connection with this Agreement or development or financing of the Improvements, and who are made aware that Confidential Information must be kept confidential according to (and may not be distributed or used other than in accordance with) this ENA. Notwithstanding the foregoing, LPC West shall have the right to make disclosures of its Confidential Information. The Parties understand and acknowledge that City is a public agency that may be subject to the Open Public Meetings Act RCW 42.30 and is subject to the Washington Public Records Act RCW 42.56 and that information and records provided to City (potentially including Confidential Information) may be subject to public inspection and production in response to public records requests notwithstanding the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement, if City receives a request to disclose Confidential Information under the State of Washington's Public Records Act, City may assert exemptions to disclosure in their sole discretion. If City receives a request to disclose Confidential Information, City agrees to give LPC West ten (10) days' notice prior to disclosure so that LPC West may

seek a protective order. Notwithstanding anything to the contrary contained herein, the term “Confidential Information” shall not, however, include any information that is:

11.3.1 contained in an unrestricted, generally-available printed publication prior to the Effective Date;

11.3.2 available to the general public without use of a Washington Public Records Act Request at the time of disclosure or that becomes publicly available without any wrongful act or failure to act on the part of the recipient;

11.3.3 is known by either Party without any proprietary restrictions at the time of receipt of such confidential information from the discloser or becomes rightfully known to either Party without proprietary restrictions from a third-party source;

11.3.4 is independently developed by the recipient without reference to the confidential information of the discloser; or

11.3.5 is disclosed by the discloser in an open public meeting.

11.4 Time for Approvals. Where this Agreement requires the approval of a Party, said Party will approve or disapprove within ten (10) Business Days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary. Failure by a Party to approve or disapprove within said period of time shall be deemed approval. Any disapproval shall state in writing the reasons for such disapproval. Except when specifically set forth as subject to “sole discretion,” approvals will not be unreasonably conditioned, withheld, or delayed.

11.5 Non-Liability of City Officials, Employees and Agents. No member, official, employee, or agent of City shall be personally liable to LPC West, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to LPC West or successor or on any obligation under the terms of this Agreement.

11.6 Force Majeure Delay; Extensions of Time for Performance.

11.6.1 In addition to specific provisions of this Agreement, neither Party hereunder (or any successor in interest) shall be deemed to be in default or breach of this Agreement if any delays or defaults by such Party or its successor or the failure of any Condition Precedent arise from any of the following: (a) insurrection; (b) strikes; (c) lock-outs; (d) riots; (e) floods; (f) earthquakes; (g) fires; (h) unusually severe weather; (i) casualties; (j) acts of god; (k) acts of the public enemy; (l) acts of the other Party; (m) epidemics or pandemics; (n) quarantine restrictions; (o) freight embargoes; (p) litigation (including suits filed by third parties concerning or arising out of this Agreement); (q) inability to secure or the rationing of necessary services, labor, materials, tools, or sources of energy; (r) condemnation; (s) acts or failure to act of any public or governmental agency or entity (other than City as a Party to this Agreement); or (t) any other causes (other than failure of the financing contingency set forth in Section 2.1.2.5) beyond the reasonable and foreseeable control or without the fault of the Party claiming an extension of time to perform (collectively, “**Force Majeure**” and each, a “**Force Majeure Event**”).

11.6.2 If a Party determines that a Force Majeure Event exists, then that Party shall give notice of that event and its cause or causes to the other Party. If any Force Majeure Event occurs, the time or times for performance of the obligations of the Party or Parties, as the case may be, including the failure



of any Condition Precedent, shall be extended for the period of the Force Majeure Event; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within sixty (60) days after the Party becomes aware of a Force Majeure Event, have first notified the other Party in writing of its cause or causes and the estimated time of correction. Any Party may suspend its performance under this Agreement if that performance is conditioned on performance that another Party has been excused from by reason of a Force Majeure Event. A Party who intends to suspend its performance based on another's Force Majeure Event shall notify the other Party in writing of the specific date of suspension of performance and the specific performance it will not undertake or continue. Upon resumption of performance by the Party initially excused due to a Force Majeure Event, all Parties shall immediately resume performance.

11.6.2.1 If a Force Majeure Event does prevent or is likely to prevent a Party's performance for a period longer than eighteen (18) months, then any Party may give notice, at any time, to the other Party of its election to initiate negotiations to amend this Agreement, including the Schedule of Performance. If a Party elects to initiate such negotiations, both Parties shall participate in such negotiations in good faith and in the spirit of cooperation for a period of at least ninety (90) days. At any time after the ninetieth (90th) day, either Party may elect to terminate negotiations by written notice to the other Party. If neither Party initiates negotiations pursuant to this Section 11.6.1.2, or if the negotiations do not result in an amendment acceptable to all affected Parties, then the period of Force Majeure Event shall end on the last day of the eighteen (18) month period.

11.6.2.2 Times of performance under this Agreement may also be extended in writing by City and LPC West.

11.7 Title of Parts and Sections; Interpretation. 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 provisions. In construing or interpreting this Agreement, (a) singular pronouns and nouns shall be taken to mean and include the plural, and the plural shall be taken to mean and include the singular, and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require, (b) "shall" means mandatory and imperative, and (c) "including" means including without limitation.

11.8 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, members, managers, officers, directors, shareholders, agents, contractors and employees, from all suits, actions, claims, causes of action, administrative proceedings, arbitrations, enforcement actions, costs, demands, judgments, and liens arising out of the Indemnifying Party's performance or non-performance under this Agreement, or arising out of acts or omissions of the Indemnifying Party or any of Indemnifying Party's contractors, subcontractors, employees, agents, or other persons claiming under any of the aforesaid, except to the extent caused by the Indemnified Party's willful misconduct or gross negligence. The provisions of this Section shall survive termination of this Agreement.

11.9 Applicable Law. This Agreement shall, in all respects, be governed, interpreted, and enforced under and pursuant to the laws of the State of Washington, without resort to any jurisdiction's conflicts of law principles, rules, or doctrines.

11.10 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 under that provision have been materially altered or abridged by such invalidation, voiding, or unenforceability.

11.11 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.

11.12 Waiver. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by City or LPC West of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

11.13 Binding Upon Successors.

11.13.1 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.

11.13.2 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 City expressly releases the Property from the requirements of this Agreement.

11.14 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, nor any other association between the Parties.

11.15 No Third-Party Beneficiaries. No person or entity other than City, LPC West, and their permitted successors and assigns shall have any right of action under this Agreement, other than Mortgagees as expressly provided in this Agreement.

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

11.17 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next Business Day.

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

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

11.20 Complete Understanding of the Parties. 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. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations made by either Party, implied or express, other than those contained in this Agreement.

11.21 Amendments. The Parties can amend this Agreement only by means of a writing executed by all Parties. The Executive Director of the CCRA may execute any and all amendments to this Agreement on behalf of the City other than amendments that extended deadlines by more than one hundred eighty (180) days or result in the City providing public funding for the design or construction of any Component.

11.22 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, and 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 City's behalf by the City Attorney or any person who shall have been designated in writing to LPC West by the City Manager as having such execution authority. If 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 City to consider any request by LPC West for a waiver of any particular obligation as set forth herein.

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

11.23.1 "**LPC West's Affiliate**" means (a) any entity that directly or indirectly controls, is controlled by, or is under common control with LPC West; (b) any entity at least a majority of whose economic interest is owned by LPC West; or (c) any single purpose entity formed to enter into the Ground Lease, develop, own, lease, sell, or otherwise deal with the Component of the Improvements for a specific Parcel, provided that such entity has entered into a development contract with LPC West, such that LPC West will manage the construction of the relevant Component of the Improvements. The term "**control**" means the

power to direct the day-to-day management of such entity through voting rights, ownership, or contractual obligations.

11.23.2 Except as otherwise provided in this Section 11.23, LPC West shall not assign its rights under this Agreement without the prior written consent of City which may be granted, denied or conditioned in City's sole and absolute discretion.

11.23.3 No assignments shall relieve the assigning Party from its obligations under this Agreement unless expressly agreed to in writing by City.

11.24 Attorney Fees. If any action or proceeding of any nature whatsoever is commenced by either Party to interpret or enforce this Agreement or to collect damages as a result of the breach of any of the provisions of this Agreement, the substantially prevailing or non-defaulting Party in such action or proceeding, including any appellate proceedings, shall be entitled to recover from the losing or defaulting Party all reasonable costs and expenses, including, without limitation, attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, in addition to other amounts provided by law or other relief awarded by the court at trial or on appeal.

11.25 Dispute Resolution. If a dispute arises under this Agreement, which shall include the inability of the Parties to reach agreement on any issue or item contemplated by this Agreement, either Party may notify the other in writing of the issue. Following such notification, the Parties shall meet and confer in an attempt to resolve the dispute or issue for a period thirty (30) days unless the Parties mutually agree to extend the period for meeting and conferring. A decision maker for each of the Parties shall attend and participate in at least one such meeting. At the conclusion of this period, if the dispute or issues are not resolved, the Parties shall mutually select a qualified mediator and submit the dispute or issues for resolution by mediation. If the Parties cannot agree to the appointment of a mediator within fifteen (15) days following the end of the 30-day meet and confer period, either Party may request the Presiding Judge of the Clark County Superior Court to designate a mediator. The Parties will accept the mediator so designated to mediate the dispute or issues. If the mediation fails, either Party may submit the matter to a court of competent jurisdiction for resolution. The Parties will split all costs and fees of the mediator.

11.26 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.

11.27 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, all of which, when taken together, shall be one and the same Agreement.

11.28 Plans and Reports. If the City exercises the right of reversion related to Parcel 3 and described in Section 3.2.4 above, within thirty (30) days of the City's written request therefor, LPC West agrees to provide the City with copies of all non-proprietary plans, studies and reports developed by or for LPC West in connection with its development of Parcel 3, including without limitation, all engineering reports, traffic studies, soils and environmental reports.

11.29 Press Releases. Any press release or public announcement of the DDA or the transactions or projects contemplated by this DDA, outside of a public meeting or as a result of a public records act

request, will be coordinated and mutually agreed upon in writing by LPC West and the City prior to any release.

*[Remainder of page intentionally left blank;  
signature pages follow.]*

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

**CITY:**

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

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

Attest By:

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

Approved as to Form:

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

**LPC WEST:**

**LPC WEST INC.**, a Texas corporation

By: \_\_\_\_\_  
Patrick Gilligan, Executive Vice President

**EXHIBIT A-1**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Title description obtained from that certain Commitment of Title Insurance issued by Chicago Title Company of Washington, dated July 13, 2002, Order Number 622-160230 (Amendment One). Legal description is subject to change to the extent the foregoing commitment is updated.

**Parcel I:**

Lots 1, 2, 7, and 8, Block 34, of the TOWN OF VANCOUVER (commonly known as WEST VANCOUVER), according to the plat thereof, recorded in Volume 'B' of Plats, Page 40, records of Clark County, Washington.

TOGETHER WITH the North half of vacated West 5th Street lying South of said portion of said block as set forth in Vacation Ordinance M-3628, as recorded in Auditor's File No. 3732663, which would attach by operation of law.

EXCEPT that portion conveyed to the City of Vancouver, a municipal corporation of the State of Washington, on June 20, 2005 under Auditor's File No. 4005368.

**Parcel II:**

That portion of Blocks 34 and 38 of the TOWN OF VANCOUVER (commonly known as WEST VANCOUVER), according to the plat thereof, recorded in Volume 'B' of Plats, Page 40, records of Clark County, Washington, and that portion of vacated Franklin Street between West Fifth Street and West Sixth Street described as follows:

BEGINNING at a point which is on the South line of West Sixth Street and being 100 feet North 89°14'34" West of the Northeast corner of Block 34 of said Plat, thence North 89°14'34" West along the South line of said Street 200 feet to a point, thence South 0°45'26" East 202.71 feet, more or less, to a point on the North line of West Fifth Street; thence South 89°14'07" East along the North line of said Street 200 feet to a point which is 100 feet North 89°14'07" West of the Southeast corner of said Block 34; thence North 0°45'26" East 202.74 feet, more or less, to the Point of Beginning.

TOGETHER WITH the North half of vacated West 5th Street lying South of said portion of said blocks and South of that portion of vacated Franklin Street as set forth in Vacation Ordinance M-3628, as recorded in Auditor's File No. 3732663, which would attach by operation of law.

**Parcel III:**

All of Lots 2, 3, 4, and 7, and portions of Lots 1, 5, 6, and 8, all in Block 38 of the TOWN OF VANCOUVER (commonly known as WEST VANCOUVER), according to the plat thereof, recorded in Volume 'B' of Plats, Page 40, records of Clark County, Washington, described as follows:

Beginning at a point of the South line of West 6th Street that is North 89°14'34" West 300.00 feet from the

West line of Esther Street and running thence South 0°45'26" West 202.71 feet to the South line of said Block 38 of the plat of the Town of Vancouver; thence North 89°14'07" West along said line 71.10 feet to the Burlington Northern Railroad right of way; thence Northwesterly along said right of way, along the arc of a curve to the right having a radius of 3777.33 feet through a central angle of 2°12'54", an arc distance of 146.03 feet to the East line of vacated Grant Street; thence North 0°45'23" East 108.01 feet to the South line of West 6th Street; thence South 89°14'34" East 182.25 feet to the Point of Beginning.

TOGETHER WITH that portion of vacated West 5th Street, as vacated by Ordinance No. M-3828, recorded under Auditor's File No. 3732663, which would attach by operation of law.

**Parcel IV:**

A portion of Lot 1, Block 45, of the TOWN OF VANCOUVER (commonly known as WEST VANCOUVER), according to the plat thereof, recorded in Volume 'B' of plats, Page 40, records of Clark County, Washington, and of vacated Grant Street on the East, described as follows:

Beginning at the intersection of the South line of West 6th Street with the East line of Grant Street, said point being the Northwest corner of Block 38 of said West Vancouver, and running thence South 0°45'23" West, along the West line of said block 108.01 feet to the right of way line of the Burlington Northern Railroad; thence Northwesterly along said right of way along a curve to the right having a radius of 3777.33 feet, through a central angle of 2°24'51" an arc distance of 159.16 feet to the South line of the aforementioned West 6th Street; thence South 89°14'34" East 116.88 feet to the Point of Beginning.

**Parcel V:**

Lots 1 and 2, and all of those portions of Lots 6, 7, and 8, in Block 35 of the TOWN OF VANCOUVER (commonly known as WEST VANCOUVER), according to the plat thereof, recorded in Volume 'B' of Plats, Page 40, records of Clark County, Washington, which lie North of the Northerly right-of-way line of the Spokane, Portland and Seattle Railway Company main line to Spokane, said right-of-way line being parallel to and 42.5 feet distant from the centerline of said main line tract.

TOGETHER WITH the South half of vacated West 5th Street lying North of said Lots 1 and 2 as set forth in Vacation Ordinance M-3628, as recorded in Auditor's File No. 3732663, which would attach by operation of law.

EXCEPT that portion conveyed to the City of Vancouver, a municipal corporation of the State of Washington, by Statutory Warranty Deed recorded March 6, 2009, under Auditor's File No. 4537639.

**Parcel VI:**

That portion of Lots 3 and 4, Block 35, of the TOWN OF VANCOUVER (commonly known as WEST VANCOUVER), according to the plat thereof, recorded in Volume 'B' of Plats, Page 40, records of Clark County, Washington, lying Northeasterly of a line parallel with and distant 42.5 feet Northeasterly from the centerline of the Spokane, Portland and Seattle Railway Company main line.

TOGETHER WITH the South half of vacated West 5th Street lying North of said Lots 4 and 3 as set forth in Vacation Ordinance M-3628, as recorded in Auditor's File No. 3732663, which would attach by operation of law.



**Parcel VII:**

A parcel of property in the plat of TOWN OF VANCOUVER (commonly known as WEST VANCOUVER), according to the plat thereof, recorded in Volume 'B' of plats, Page 40, located in the Southwest quarter of

Section 27, Township 2 North, Range 1 East of the Willamette Meridian in Clark County, Washington, described as follows:

BEGINNING at the Northeast corner of Block 35 in said Plat of TOWN OF VANCOUVER (commonly known as WEST VANCOUVER); thence South 89°58'39" West, along the South line of West 5th Street, 201.21 feet to the West line of said Block 35 and the TRUE POINT OF BEGINNING; thence continuing South 89°58'39" West 68.23 feet to a point on the Northeasterly line of the Burlington Northern Railroad right-of-way said point on a non tangent 3777.22 foot radius curve to the left of having a tangent bearing into said curve of South 52°40'41" East of said point; thence along said Northeasterly line and around said 3777.22 foot radius curve to the left 85.04 feet to said West line of said Block 35; thence North 00°01'33" East, along the West line of said Block 35, a distance of 50.81 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH that portion of vacated West 5th Street, as vacated by Ordinance No. M-3722, recorded under Auditor's File No. 4098324.

**Parcel VIII:**

All of Block 28 of the TOWN OF VANCOUVER (commonly known as WEST VANCOUVER), according to the plat thereof, recorded in Volume 'B' of Plats, Page 40, records of Clark County, Washington.

TOGETHER WITH the West half of vacated Daniels Street lying East of said Block 28, as more fully set forth in that Vacation Ordinance M-1325, as recorded in Auditor's File No. 8301060002, which would attach by operation of law.

TOGETHER WITH the abutting one-half width of Fifth Street, to the centerline thereof, effective upon the vacation thereof as more fully set forth in that Vacation Ordinance M-3628, as recorded in Auditor's File No. 3732663, which would attach by operation of law.

EXCEPT that portion thereof conveyed to the City of Vancouver, a Washington municipal corporation, under Auditor's File No. 4389581.

**Parcel IX:**

That parcel of land in a portion of the Amos Short Donation Land Claim, and a portion the plat of TOWN OF VANCOUVER (commonly known as WEST VANCOUVER), recorded in Volume 'B' of Plats, Page 40, in a portion of the Southwest quarter of Section 27, Township 2 North, Range 1 East of the Willamette Meridian, City of Vancouver, Clark County, Washington, described as follows:

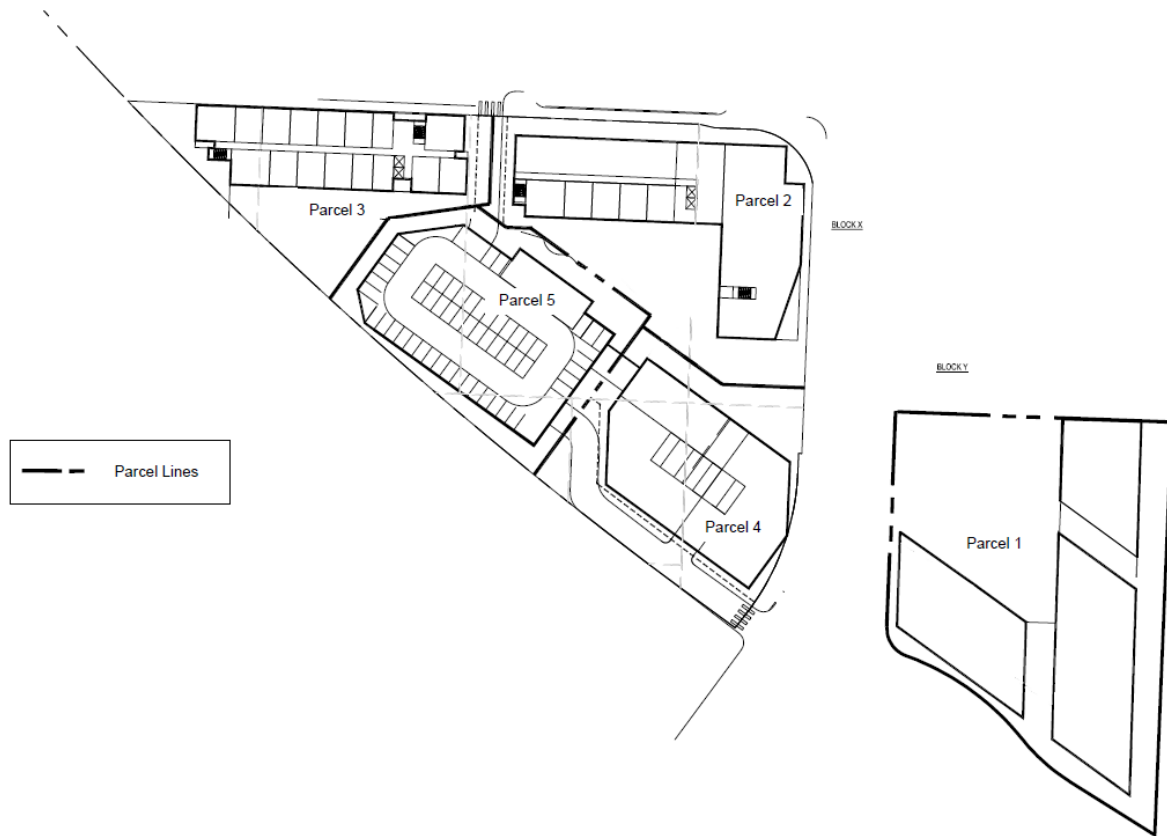
BEGINNING at the Southeast corner of Block 28 of said plat; thence South 02°24'41" West, for a distance of 117.08 feet; thence North 57°54'46" West, for a distance of 86.48 feet; thence along the arc of a 170.00 foot radius non-tangent curve to the right, the long chord of which bears North 48°19'12" West, for a chord distance of 56.66 feet, through a central angle of 19°11'08", for an arc distance of 56.92 feet; thence

{01300729;14}

Exhibit A-1

along the arc of a 230.00 foot radius reverse curve to the left, the long chord of which bears North 45°50'35" West, for a chord distance of 56.98 feet, through a central angle of 14°13'54", for an arc distance of 57.13 feet; thence South 87°45'03" East, along the South line of said Block 28, for a distance of 161.52 feet to the Point of Beginning.

**EXHIBIT A-2  
DEPICTION OF THE PARCELS**



**EXHIBIT B**  
**100% Schematic Design Plans and Drawings**

[TO BE INSERTED]

**EXHIBIT C**  
**INTENTIONALLY OMITTED**

**EXHIBIT D**  
**Schedule of Performance**

This Schedule of Performance summarizes the proposed, anticipated schedule for various milestones under this Agreement and under the Ground Leases. 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 Agreement. Except for commencement of construction and completion of construction, the Target Date of Completion noted below are goals not deadlines, and so long as LPC West uses commercially reasonable diligence and efforts to complete the milestones, the failure to complete a milestone by the corresponding Target Date of Completion shall not constitute a failure of a City condition or a default under the Agreement. As to commencement of construction and completion of construction, any failure to achieve the milestone by the Target Date of Completion provided below shall constitute an event of default under the Ground Lease for that Parcel as provided in Article 4 of this Agreement, and shall entitle City to exercise its remedies under that Ground Lease, but shall not constitute a separate default under this Agreement.

Item	Milestone	Target Date of Completion
	<i>Pre-Closing on a Parcel, Pursuant to this Agreement</i>	
1.	City Council Approval of Ground Lease form	90 days after Effective Date
2.	City Council Approval of Affordable Housing conveyance	90 days after Effective Date
3.	City Removal of Generator and Well	January 31, 2025. If not completed by April 30, 2025 then it will be an event of default on the part of City.
4.	Recording of Legal Lots	July 1, 2025 or within 60 days of land use approval, whichever is the earlier.
5.	Recording of CC&Rs	90 days following creation of the Legal Lots
6.	Approval of Permits for Improvements to start construction	April 1, 2026
7.	Phase 1 Outside Closing Date	April 1, 2026
	<i>Post-Closing on a Parcel, Pursuant to Ground Lease</i>	
8.	Commencement of Construction of Phase 1	July 1, 2026
9.	Required Completion Date of Phase 1	July 1, 2029 or within 3 years of commencement of construction, whichever is the earliest

**SCHEDULE 2.4.5**  
**Final Legal Lot Configuration**

[TO BE INSERTED]

**Schedule 3.2.4.1  
Form of Deed**

After recording, return to:

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Document Title:	Statutory Bargain and Sale Deed
Reference No(s). of Related Documents:	N/A
Grantor:	City of Vancouver, a Washington municipal corporation
Grantee:	<hr/>
Legal Description (abbreviated):	<hr/>
Additional Legal Description:	See Exhibit A
Assessor Property Tax Parcel/Account No(s).	<hr/>

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**STATUTORY BARGAIN AND SALE DEED**

The Grantor, CITY OF VANCOUVER, a Washington municipal corporation, for and in consideration of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), in hand paid, bargains, sells and conveys to \_\_\_\_\_, a[n] \_\_\_\_\_, the real estate situated in the County of Clark, State of Washington and legally described in the attached Exhibit A, subject to those matters set forth in the attached Exhibit B.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:	CITY OF VANCOUVER, a Washington municipal corporation
----------	--

By:	_____
Name:	_____
Title:	_____



STATE OF WASHINGTON        )  
  ) ss.  
County of Clark                )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the City of Vancouver, a Washington municipal corporation, which has executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said city, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

\_\_\_\_\_  
(Place of Residence of Notary Public)

(seal or stamp)

My Commission Expires:\_\_\_\_\_

**EXHIBIT A**  
**(to Statutory Bargain and Sale Deed)**

Property Legal Description

[To be inserted.]

**EXHIBIT B**  
**(to Statutory Bargain and Sale Deed)**

Permitted Encumbrances

[To be inserted.]

**Schedule 3.2.4.2**

**Form of Assignment of Intangibles**

**ASSIGNMENT OF INTANGIBLES**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY OF VANCOUVER, a Washington municipal corporation ("**Assignor**"), hereby assigns, transfers, sets over and delivers to \_\_\_\_\_, a[n] \_\_\_\_\_ ("**Assignee**"), all of Assignor's right, title, and interest in and to all of the following: (a) all rights, privileges, licenses, and easements appurtenant to the real property described in the attached Exhibit A (the "**Real Property**"), including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the Real Property, as well as all development rights, air rights, and water rights; (b) all governmental approvals, entitlements, permits, warranties, guaranties, and development rights or credits related to the Real Property; and (c) all other intangible property owned by Assignor pertaining to the Real Property.

This Assignment of Intangibles shall be binding upon Assignor and shall inure to the benefit of Assignee and each of their respective successors and assigns.

IN WITNESS WHEREOF, Assignor has executed this Assignment of Intangibles effective as of \_\_\_\_\_, 20\_\_\_\_.

ASSIGNOR:

CITY OF VANCOUVER,  
a Washington municipal corporation

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

**EXHIBIT A**  
**(to Assignment of Intangibles)**

Real Property Legal Description

[To be inserted.]

### **Schedule 5.2.1**

#### **Green Building Measures**

LPC West agrees to meet the following green building measures. Failure to do so shall be considered a default under the Agreement.

#### **Energy Efficiency**

- All buildings to comply with Washington Clean Buildings Performance Standards
- All buildings will be fully electric, with the exception of restaurant space which may require gas for cooking
- EnergyStar appliances will be utilized as much as possible
- Low flow plumbing fixtures will be utilized
- High efficiency LED light fixtures will be utilized

#### **Transportation**

- 100% of the parking stalls will be EV charging ready
- 10% of stalls will have installed and operational EV charging stations
- Dedicated bicycle storage and repair facilities will be provided on the Property

#### **Lighting**

- Dark sky lighting will be utilized to minimize light pollution

#### **Heat Island Mitigation**

- Approximately 140,000 square feet of asphalt parking lot will be removed
- Aim for Silver Leaf designation in City of Vancouver TreeCAP Program
- Drought resistant vegetation and light-colored paving surfaces used in open spaces

#### **Rainwater Management**

- Bioswales in landscaped areas to harvest rainwater

#### **Material sourcing**

- Materials from local suppliers will be used as much as possible (e.g., lumber, steel, concrete, landscaping, finishes)
- Recycled and renewable materials will be used as much as possible (e.g., asphalt, flooring)



## Schedule 5.2.9 Tree Canopy Scope of Work

### Tree Canopy

#### CONCEPTUAL TREE LOCATIONS

During the previous design and community engagement phases goals such as flexible plaza space, public event space, accessible pedestrian circulation, weather protection, public art, decorative lighting, safety, and retail activation were highlighted.

The current design seeks to balance all goals. Block Y is primarily envisioned as an important civic plaza, highly visible from Esther Street, and activated by retail frontages.

TreeCAP Silver Leaf certification requires 15% canopy coverage on commercial lots.

**Block X:**  
145,038 sf x 15% = 21,905.7 sf of tree canopy required  
45 trees required for Silver Leaf  
53 trees shown (+32 street trees)

**Block Y:**  
66,846 sf x 15% = 10,027 sf of tree canopy required  
20 trees required for Silver Leaf  
13 trees shown (+20 street trees)

**Total (Block X + Block Y):**  
65 trees required for Silver Leaf  
66 trees shown (+52 street trees)

1. FLEXIBLE PUBLIC PLAZA FOR EVENTS, MARKETS + PERFORMANCES
2. FLEXIBLE SPACE FOR SMALL EVENTS + MARKETS
3. RETAIL VISIBILITY + SPILL OUT
4. RESIDENTIAL AMENITY BBQ + FLEX SPACE
5. SAFETY SURFACE PLAY AREA
6. RESIDENTIAL PATIOS
7. CIRCULATION
8. ADA ACCESS
9. FIRE ACCESS
10. SERVICE ACCESS + FOOD TRUCK EVENT PARKING
11. PARKING GARAGE ACCESS
12. GARAGE BELOW



Oregon White Oak (Quercus garriana) was used as a basis of design for these diagrams. The final design will include a variety of species and native adaptive trees, shrubs and grasses. When space allows, large trees will be used to create visual shade and limit the heat island effect in small spaces, such as around residential patios, multiple small or medium trees may be used in place of large trees.



#### Highlights:

- 65 Trees required for TreeCAP Silver Leaf Certification
- 66 Planned Trees



### Schedule 6.2.3 Workforce and Business Development Strategy

#### **I. Project Goals**

##### **A. Participation Goals**

- Local Business participation:
  - BIPOC General Contractor – 100%
  - Minimum BMWESB participation goal – 20%; Aspirational BMWESB participation goal – 40%
  - Minimum SW Washington Subcontractor (SWS) goal – 20%; Aspirational SW Washington Subcontractor (SWS) goal – 30%
- Apprenticeship Programs:
  - Goal to achieve 20% of labor hours in each apprenticeship trade for contracts of \$750,000 or more.
  - Develop a plan in collaboration with Workforce Southwest Washington and NAMCO that does not cannibalize specific apprenticeship goals for BIPOC and women regarding journey level positions. (*i.e.*, track BIPOC and women journey level participation towards 20% goals).
- Endeavor to maximize employment opportunities for BIPOC and women.
- Bring the highest value possible to the Owner for each contracting opportunity.
- Engage the local community through the bidding process.

To accomplish these project goals, LPC West’s general contractor will closely follow the approach laid out in this Contracting Plan. The entire project team will collaborate, employing strategies and pragmatic solutions to ensure the Project creates opportunities, builds community, and strives to meet the goals outlined in this plan.

This Contracting Plan does not apply to contracts in effect as of the Effective Date, to contracts with a dollar amount of less than \$200,000, or to scopes of work requiring highly specialized contractors thereby making compliance unreasonable or impractical (e.g., elevators). The dollar amounts of the foregoing contracts will be removed from the total contract price when determining progress toward or achievement of the goals set forth in this Contracting Plan.

##### **B. BIPOC Return on Investment (B-ROI)**

In addition to working to achieve the participation goals set forth above, LPC West believe it is also important to help grow the long-term capacity of BMWESB businesses. Achieving an aspirational percentage goal does little for the community if the firms working on the projects do not have sustained growth after completion of the project. We hope that with NAMCO and Workforce Southwest Washington support, LPC West’s general contractor will successfully engage the BMWESB community and provide meaningful opportunities on this project and on future projects.

Many project sponsors and owners are unaware that BIPOC Prime Contractors (BPC) directly support the growth of BIPOC Subcontractors (BSC) and businesses. This growth enhances the

subcontractor community for all prime contractors and leads to a sustainable and more price-conscious subcontractor community in the long term.

## **II. Outreach**

### **A. General Outreach**

LPC West's general contractor will continuously update its comprehensive list of BMWESB firms by utilizing the following means of contact:

- General contractor's bid list
- Office of Minority & Women's Business Enterprises (OMWBE)
- Procurement Technical Assistance Centers (PTAC)
- Southwest Washington Contractors Association (SWCA)
- Greater Vancouver Chamber of Commerce - member
- National Association of Minority Contractors (NAMCO)
- Oregon Association of Minority Entrepreneurs (OAME)
- Workforce Southwest Washington (WSW)
  - Affiliate apprenticeship programs include:
    - Evening Trades Apprenticeship Preparation (ETAP)
    - Constructing Hope Pre-Apprenticeship Program (ICCDC)
    - Oregon Tradeswomen, Inc.
    - Portland Youth Builders
    - Urban League of Portland
    - Worksystems, Inc.
    - POIC Pre-Apprenticeship

In addition, LPC West's general contractor will:

- Host a minimum of two significant outreach events focusing on this Contracting Plan.
  - Meetings will cover project scope, bid and project schedule, workforce training requirements, and preliminary technical assistance.
  - All meetings will include key members of the project team.
  - Project staff will follow up with all meeting attendees to continue to foster meaningful relationships.
- Advertise subcontracting work and potential BMWESB business opportunities in local minority newspapers in SW Washington and Portland, including, but not limited to: The Columbian, The Skanner, El Hispanic News, Asian Reporter, and Portland Observer.
- Foster majority and BIPOC business introductions before bidding to promote positive sub-contracting partnerships. This will be accomplished at pre-bid meetings and through the efforts of NAMCO, SWCA, and LPC West's general contractor's preconstruction team.
- Contact BMWESB businesses that perform the appropriate type of work through personal meetings, phone, email, and text, informing them of the pre-bid meetings and all bidding opportunities.
- Provide a calendar of bidding events and outreach opportunities. The project will also be highlighted at NAMCO's monthly membership meetings in an attempt to increase interest and share contracting opportunities.

*B. Focused Outreach and Technical Assistance*

- LPC West's contractor and NAMCO will identify BMWESB businesses that need help and attempt to develop a payment system that supports such businesses' cash flow, if and to the extent feasible.
- **"No question is a bad question"** bidding climate.
  - Plans will be available in the offices of LPC West's general contractor, SWCA and NAMCO and on the corresponding websites to promote a "safe" bidding atmosphere.
- BMWESB and SWS MEP opportunities capacity and portfolio building. Before the bid period, LPC West's general contractor, with the support of NAMCO, will identify qualified MEP businesses that are interested in pursuing the Project. LPC West's general contractor will conduct informational meetings where firms will be presented with essential information about the project. If smaller firms are interested in partnering with larger firms, LPC West's general contractor will make business introductions and recommend a scope package to help to facilitate partnering structures.
- LPC West's general contractor will use "Right Size" Bid Packages to eliminate barriers to entry and attract bidders. Larger packages will be broken apart to entice smaller companies to bid on the smaller work packages that are more achievable.

*C. Youth Participation Opportunities*

To help heighten awareness of the opportunities in the construction trades, LPC West's general contractor will:

- Create construction site visit opportunities for students, including, among other topics, lessons on building, math, and career coaching. During site visits, we will investigate options for students to be involved in all aspects of the construction process.
- Create awareness of construction as a viable career in the BIPOC community. Facilitate project tours with BIPOC youth involved in the following four organizations: The Blueprint Foundation, Elevate Oregon, SEI, Black male achievement group, and Building Blocks to Success.
- Require subcontractors awarded over \$1 million in contracts to register for the Northwest Youth Careers Expo, which is another opportunity to expose students to the broad and diverse construction world.

**III. Bidding Strategies**

LPC West's general contractor will utilize the following procurement methods for subcontractor bidding and award:

- A. Modified Bidding – Low bid with weight given to BIPOC and MWESB firms
- B. Bidding – Targeted Firms Only
- C. Price/Qualifications (RFP)
- D. Low Quote (Less than \$100,000, at which level attempting to achieve Contracting Plan goals is optional)

#### A. Modified Bidding – Low Bid with Weight Given to BIPOC and MWESB Firms:

A large portion of the subcontracted work will be procured through a modified, low bid process. A traditional low-bid process would exclude from the evaluation factors other than the submitted price. The LPC West general contractor-modified bid evaluation process for the publicly bid scopes will be evaluated based on a scoring system that considers BMWESB certification. This method gives the most weight to the low bid and also considers BMWESB certification in a competitive environment.

The scoring criteria for public bid scopes are as follows:

	<u>Maximum Points</u>
Bid Price	90 Points
Certified BMWESB	10 Points

The lowest responsive\* bidder will be awarded 90 points. The remaining bidders will receive points based on the percentage amount that they are higher than the low bidder.

**Example:** If the low bid is \$200k and the high bid is \$225k, the high bid is 12.5% higher  $(225-200)/200$ . In this case, the high bid would receive a 12.5% deduction from the 90 possible points resulting in 78.75 points  $(90 \times (1-.125))$ . If the 225k subcontractor also has BMWESB certification, 10 extra points would be added to the 78.75 score for a total score of 88.75. In this example, with the adjusted score, the \$200k bidder would still win the bid with 90 points versus the BMWESB \$225k bid with 88.75 points.

**BMWESB Certification:** As noted above, all certified BMWESB bidders receive 10 points for their bid submission. Suppose a non-certified firm submits a bid that includes materials procured through BMWESB certified suppliers, or there are second tier BMWESB certified subcontractors included. These values will be listed on the bid form, and a pro-rated amount of the 10 points available will be awarded. For example, if a lower tier BMWESB firm represents 50% of the value of the total subcontract, the bid will receive an additional 5 points.

LPC West and its general contractor will evaluate bids based on the following:

- Bid Proposal:
  - Completeness of scope
  - Price
  - Equity participation
  - Ability to meet apprenticeship goals
  - Ability to meet Project contract requirements
  - Ability to meet Project schedule
- Prequalification Status:
  - Similar project experience
  - Safety record
  - Current workload (capacity)
  - Ability to meet LPC West's general contractor's insurance requirements

If the winning bid, as calculated by the process described above, is outside the construction budget, the range of industry standards, or both, LPC West reserves the right to award to the next responsible bidder or re-bid based upon the bidding protocol described above.

### **B. Public Bidding – Targeted Firms Only**

To achieve BMWESB subcontractor participation goals, a portion of the subcontracted work for select trades will be procured through a competitive bid process that includes only certified BMWESB firms. This approach allows the project team to significantly increase the chances of subcontracting with a BMWESB certified firm while fostering a competitive bid environment. Scopes can be tailored to match the capabilities of BMWESB firms.

Selection of the portion of the work or the trades eligible for this type of bidding will be based on the following criteria, which has been developed to ensure a competitive process that provides LPCW with the best value:

- That there are no less than three (3), but ideally five (5) certified firms in the specified trade.
- That no fewer than three (3) certified firms in the specified trade have the skill and experience to perform the scope of work.
- That a member of the general contractor team has received a verbal commitment to bid from no fewer than three (3) firms in the specified trade.

If all submitted BMWESB bids are outside the range of the construction budget, industry standards, or both, LPC West reserves the right to re-bid based on the public bidding protocol.

The Summary of Bid Packages below identifies the scope of work that will be procured through this BMWESB competitive bid process.

### **C. Price / Qualifications (RFP)**

As it is critical to schedule and design to secure specific trades early, we recommend selecting and awarding Mechanical, Electrical, Plumbing, and Fire Protection trades/scopes using a Request for Proposal (RFP) process that evaluates both price and qualifications of the subcontractors in a competitive environment. Before the bid period, LPC West's general contractor, with support from NAMCO and other supporting organizations, will identify qualified MEPF BMWESB and Non-Certified businesses that are open to mutually beneficial partnering opportunities. We will make business introductions and help to facilitate partnering structures.

### **D. Low Quote (Less than \$100,000)**

It is intended that the low quote method of procurement for scopes under \$100,000 will be used, which amounts are excluded from and need not be counted toward the Contracting Plan goals, including but not limited to the following:

- Modeling/Revit Services
- Hazardous Materials Monitoring
- Dumpsters/Trash Removals
- Surveying

#### **IV. Bid Award Process**

Once all points are calculated, the subcontractor with the most points will be tentatively awarded the project.

- If the tentative award goes to a subcontractor with no points for their BMWESB contracting plan, the construction project team will meet with the tentative subcontractor to help support the contractor in meeting at least one of the goals of this Contracting Plan.
- LPC West's general contractor will meet with the tentative subcontractor and further review bids for completeness. Project schedule, staffing, and goals will be further discussed.
- Once all of the general contractor's subcontractor bid protocol has been met, the results of the bid process will be made public. LPC West's general contractor will hold a debriefing session with any subcontractors that request a meeting.

**Schedule 6.2.4  
Design Guidelines**

**WATERFRONT GATEWAY DESIGN GUIDELINES**

**Building Design**

- Façade articulation should reinforce human scale by conveying occupancy types utilizing strategies as balconies, bay windows and operable windows for residential and hospitality uses, solar screening and rhythmic windows patterns and spacing for office, clear glass and signature entries for retail.
- All building elevations should be addressed in the architectural design with the same degree of detail, proportion, and materials. However, each building should have distinctive architectural characteristics to create interest.
- Residential unit ground floor entrances shall include elements that provide transitional space between public and private realm such as landscape spaces, low walls, stoops, porches or recessed entry.
- The following are prohibited exterior building materials: plastic laminates, glossy or large expanses of acrylic or plexiglas, pegboard, mirror, highly polished or plated metals (except as trim), mirrored glass, vinyl, fabric or paper wall coverings, plywood or particle board, sheet or modular vinyl, shingles, shakes, and rustic siding are prohibited.
- Building materials shall not present a hazard to birds or other wildlife.
- Screen structured parking and integrate into overall building design. Screening provides an opportunity to enhance building design through the use of art, green walls, and innovative materials.
- Roof top mechanical equipment shall be designed into the building form whenever possible and screened with complementary building materials from the building when not possible to integrate into the building design.
- Locate loading docks and service areas, including trash collection facilities and utility transformers, internal to the building, including the truck parking.

**Landscaping**

- Incorporate low-impact development strategies such as vegetated roofs, permeable pavement, and bio-retention cells (raingardens), where feasible.
- Use the preferred native and adaptive plant species list (attached) for all at-grade planting areas.

**Sustainable Site and Development Design**

- All new buildings are to be constructed to a minimum LEED Gold Certification or similar equivalent or better
- Incorporate low-impact development strategies such as vegetated roofs, permeable pavement, and raingardens, where feasible.
- Incorporate low-impact development practices in the site and landscape where feasible.
- Integrate ecological landscape elements in site designs.

**Lighting**

- All building mounted or façade lighting (in-grade, façade mounted, and entry lighting) should be carefully selected for scale, finish, appropriate light output, and consideration of light pollution reduction and to not create hazards for birds or other wildlife.

- In grade and up lighting shall be minimized.
- Outdoor decorative lighting in the public plazas, such as string lighting and other forms of specialty overhead lighting (“Outdoor Specialty Lighting”) is encouraged to provide points of interest and an attraction for the public. A plan for the Outdoor Specialty Lighting shall be submitted to the City for review and approval.

### **Bicycle Parking**

- Bicycle parking shall be provided for long-term (residents, hotel visitors and employees) and short-term (customers and visitors) within each block and building.
- Long-term bicycle parking shall be provided (per City Code Bicycle Parking Standards and Guidelines) within the building at the following rates:

#### **Long Term Bicycle Parking Requirements**

Land Use	Parking Requirement
Residential	1 Space/ 4 Dwelling Units
All Other Uses	1 Space/3,000 SF of Floor Area

- Long-term bicycle parking shall be provided in an accessible and safe location that is convenient to building occupants. Signing shall be provided where the location is not clearly evident from public ways providing access to the building.
- Short-term bicycle parking may be provided within or outside the building at the following rates:

#### **Short Term Bicycle Parking Requirements**

Land Use	Parking Requirement
Residential	1 Space/ 20 Dwelling Units
All Other Uses	1 Space/3,000 SF of Floor Area

- Short-term bicycle parking shall be positioned in visible areas with appropriate lighting, where not subject to vehicle traffic and within 50 feet of the building entrance. At least 50% of the spaces shall include rain protection. Bicycle parking shall be provided consistent with the *City of Vancouver Bicycle Parking Standards and Guidelines*.

### **Signs**

- All signs shall comply with the provisions of City Code Section 20.960 Signs for number, location and size restrictions. Free standing, sidewalk signs and monument signs intended to advertise uses within the development are prohibited. Kiosk, wayfinding and interpretive signage intended to promote a comprehensive project Wayfinding Program shall be allowed.
- Individual buildings that accommodate multiple businesses and require signage for each business shall define the size, number, and locations of signs. The design of signs shall be reviewed and approved by the City and building design review process to ensure the signage is integrated into the architecture and overall development.
- Signs shall be constructed of high quality, durable materials.
- Signage shall be appropriate for its intended use such as residential, office and retail.
- Window signage is limited to business name, logo and hours of operation in white vinyl, sized no more than 1 square foot for every 5 feet of linear storefront.

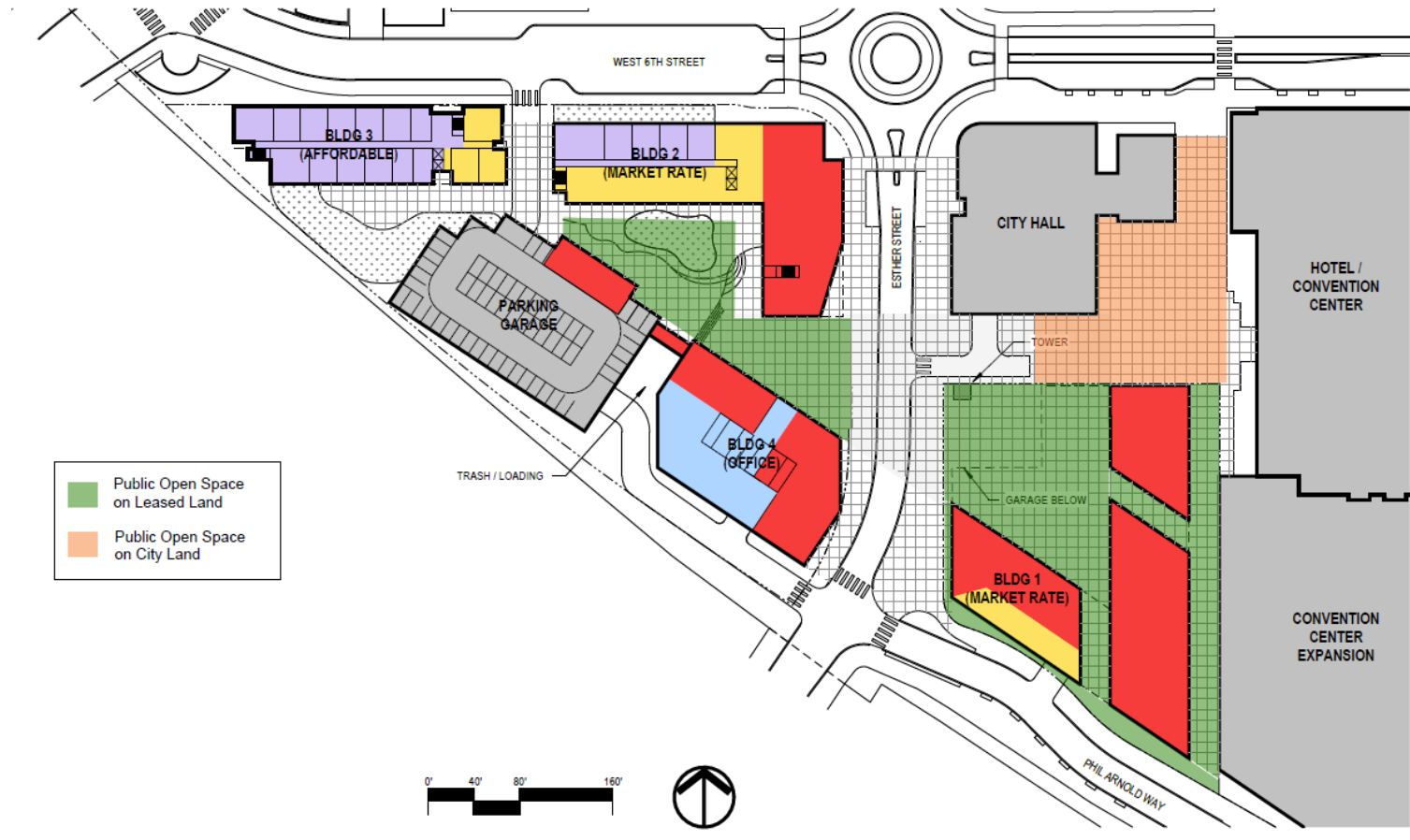


- Exposed raceways are not permitted.
- All signs shall be unlit, halo lit or indirectly lit.
- Dedicated signage for the parking structure shall be installed and located where visible from the public right of way.

### **Plazas and Open Space**

- A variety of materials are envisioned in the parks and open space system. Where possible, local and regional materials should be used for paving, walls and landscape features.
- Site furnishings, coordinated with paving materials and lighting, help define the character of public places and can play a key role in creating a unified character in urban areas characterized by a variety of architectural styles. Site furnishings include benches, trash receptacles, recycling receptacles, bollards, bike racks, landscape structures, and drinking fountains.
- All site furnishings should be durable, well made and easily maintained.
- Stand-alone furnishings should be limited in favor of integrating seating, receptacles and planters into landscape walls where grade changes occur alongside pathways and park edges. These are intended to provide places for social interaction, viewing of the river, eating, and spectator seating for small performances. Where they are required, locate modular furnishings such as free-standing benches, planters, kiosks, patio seating and receptacles to the edges of the plaza and/or parallel to the flow of pedestrian and bicycle movements, to allow continuous access and maximize flexible use of the plaza.
- Avoid large exposed faces without texture or articulation that are easily tagged or vandalized. Avoid continuous edges that exceed 36" on surfaces that can be accessed by skateboards. Where possible, skateboard deterrents should be integrated into the design of furnishing components to avoid add-on applications at a later date.

**Schedule 6.2.5**  
**Publicly Accessible Spaces and Amenities**



**VANCOUVER WATERFRONT GATEWAY | SCHEMATIC DESIGN | SITE PLAN / GROUND FLOOR USES**

1 | DEC 01, 2022 | PROJECT #20138



**Schedule 6.2.7**  
**Small Business Marketing and Outreach Plan**

**Vision**

The vision of Makers Alley is a vibrant marketplace for local, small retailers, to promote the City of Vancouver's culture and diversity, creating a community of like-minded people. LPC West and the City of Vancouver will work collaboratively to ensure this vision is met by using commercially reasonable effort to adhere to this Small Business Marketing and Outreach Plan. This Plan shall survive the term of the Disposition and Development Agreement between LPC West and the City of Vancouver dated October \_\_, 2023.

**Context & Premises**

Makers Alley is approximately 6,700 square feet located in Building 1, more specifically outlined on Exhibit A, attached.

In order to reserve space for small and local businesses, Formula Retail will be prohibited from leasing more than 40% of available space in Makers Alley. For the purposes of this Plan, Formula Retail shall be defined as a business with more than 11 locations within the United States. Regional Formula Retailers headquartered or founded in the Portland MSA are not prohibited from leasing space in Makers Alley. For the purposes of this Plan, Regional Formula Retailers are defined as businesses with less than 10 locations in the Portland Metro Area.

**Design**

With the intent of attracting smaller local tenants, Makers Alley will be designed with the following elements:

- Shared restrooms and access corridors and back-of-house facilities will be provided to lower start up and maintenance costs for tenants and maximize point-of-sale efficiencies.
- Large operable storefront doors will allow tenants to spill out into the alley way to maximize point-of sale utilization.
- Open floor plan will provide a minimal need for typical retail tenant improvements which will help lower startup costs and allow for a variety of tenant sizes.
- A minimum of 5 tenant spaces will be maintained in Makers Alley to ensure that small spaces remain available.

**Marketing and Outreach**

LPC West, its successor or assignee, will do the following to give non-Formula Retail an opportunity to lease the retail spaces in Makers Alley:

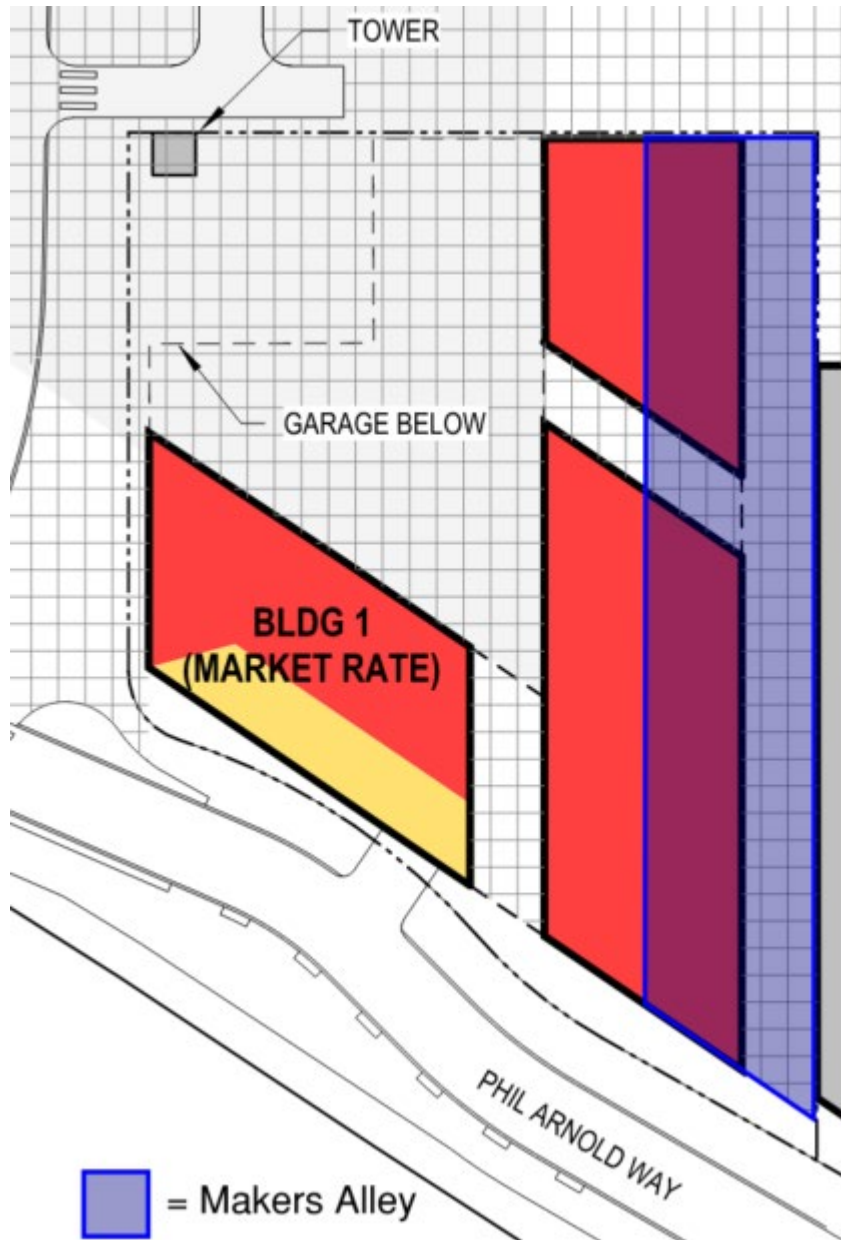
- LPC West will work directly with the City of Vancouver to generate a local/small business email distribution list, that will be utilized to ensure that local small businesses are informed of the space availability during lease up.
- Prior to completion of construction of the building LPC West along with the support of community organizations will heavily promote Makers Alley to the local, small business community, such as host hard hat tours and/or promotional events.

- LPC West will create a flyer highlighting the vacancies, as vacancies come up, and share first with the local/small business email distribution list that was created by the City and LPC West.
- LPC West and the City will work collaboratively on the programming of the plazas adjacent to Makers Alley to help drive sales.
- For the first 45 days a space becomes available/vacant, LPC West will use commercially reasonable efforts to lease only to local/small businesses and only send to the local/small business email distribution list that will be jointly created between the City and LPC West.
  - If a local/small business engages and begins trading either a letter of intent or request for proposal, LPC West will not market that space to a non-local/small business until that deal is no longer actively being negotiated from either side. That timeline would be 14 days with no new paperwork being traded back and forth.
  - If no local/small business is interested in the space then, in the interest of avoiding vacant retail spaces, LPC West will be able to extend its marketing efforts to non-local small businesses.
- For the avoidance of doubt, the selection of tenants is at LPC West's sole discretion.
- The marketing and outreach requirement will survive as long as LPC West maintains a controlling interest in Building 1. LPC West will use commercially reasonable efforts to transfer this Plan to a new owner and coordinate between any new owner and the City to enable a smooth transition.

#### **Lease Terms**

- All terms shall be market terms, including, but not limited to Rate, Term, Tenant Improvement Allowance, Free Base Rent.

Exhibit A  
(To the Small Business Marketing and Outreach Plan)  
SITE PLAN



**Schedule 6.5.2**  
**MFTE Public Benefits Cost Estimate**

LPC West shall install basalt stone stadium seating and wooden bench seating in the public plaza on Parcel 1 as described and depicted in the MFTE application materials submitted to the City by LPC West at an estimated cost of \$1,538,839.68, exceeding the required public benefit investment of \$1,179,250.

**Schedule 7.1.4**  
**Environmental Reports**

1. Memorandum re. Summary of Site Conditions and Earthwork Considerations; Waterfront Gateway – Blocks X and Y; West 6<sup>th</sup> Street and Esther Street; Vancouver, Washington, prepared by NV5, dated December 6, 2022.
2. Environmental Subsurface Investigation Report; Waterfront Gateway – Blocks X and Y; West 6<sup>th</sup> Street and Esther Street; Vancouver, Washington, prepared by NV5, dated February 1, 2023.
3. Phase I Environmental Site Assessment; Waterfront Gateway – Blocks X and Y; 6<sup>th</sup> Street and Esther Street; Vancouver, Washington, prepared by NV5, dated June 22, 2022.
4. Phase I Environmental Site Assessment; 404 West 4<sup>th</sup> Street and 411 West 5<sup>th</sup> Street; Vancouver, Washington, prepared by Stantec Consulting Services (Stantec), dated May 4, 2016.
5. Phase I Environmental Site Assessment; 503 and 615 West 6<sup>th</sup> Street and 400 Esther Street; Vancouver, Washington, prepared by Stantec dated May 5, 2016.
6. Phase II Environmental Site Assessment Report; West of City Hall (503 and 615 West 6<sup>th</sup> Street and 400 Esther Street); Vancouver, Washington, prepared by Stantec, dated August 2, 2017.
7. Supplemental Phase II Environmental Site Assessment Report; City-owned Tax Lots West and South of City Hall; Tax Lots 49305000, 49300000, 49250000, 49230000, 49240000, 49290000, 49315000, 49305000, 49300000, 48900000, 48890000, 48860000 and 48852000; Vancouver, Washington, prepared by Stantec, dated December 23, 2020.