

# PRELIMINARY REPORT

## PREPARED FOR THE HEARING EXAMINER BY REAL PROPERTY SERVICES

For the Hearing to be Held  
Thursday, July 9, 2015 at 1:30 AM

**PETITIONER: TACOMA HOSPITALITY, LLC**

**FILE NO. 124.1356**

### **A. SUMMARY OF REQUEST:**

Real Property Services has received a petition from Tacoma Hospitality, LLC to vacate a one-foot portion of Commerce Street, South 15<sup>th</sup> Street, and Pacific Avenue to cure a building foundation encroachment previously permitted under Street Occupancy Permit No. 140, as depicted on the maps attached as Exhibit 2.

### **B. GENERAL INFORMATION:**

#### **1. Legal Description of Vacation:**

The Westerly 1.00 foot of Pacific Avenue lying adjacent to and being contiguous with the Northerly 34.37 feet of Block 1504, of the Map of New Tacoma, according to the plat recorded February 3, 1875 in Volume 1 of plats, page 1, records of Pierce County, Washington;

AND

The Easterly 1.00 foot of Commerce Street lying adjacent to and being contiguous with the Northerly 35.57 feet of said Block 1504;

AND

The Southerly 1.00 foot of South 15<sup>th</sup> Street lying adjacent to and being contiguous with Lot 1 of said Block 1504;

TOGETHER WITH the Southerly 1.00 feet of said South 15<sup>th</sup> Street lying adjacent to and contiguous with said Westerly 1.00 foot of Pacific Avenue;

AND TOGETHER WITH the Southerly 1.00 feet of said South 15<sup>th</sup> Street lying adjacent to and contiguous with said Easterly 1.00 foot of Commerce Street;

Situate in the City of Tacoma, Pierce County, Washington;

#### **2. Notification:**

9.22.060 NOTICE OF PUBLIC HEARING The Public Works Department shall cause a 30-day notice to be given of the pendency of the petition by written notice posted in three

of the most public places in the City, a like notice in a conspicuous place on the street or alley sought to be vacated, a like notice in a newspaper of general circulation in the City, and a like notice to the legal property owners of all property abutting the right of way requested for vacation as enumerated on the applicant's vacation petition, and to any other interested parties of record. In addition to posting notices of the hearing, the Public Works Department shall mail a copy of the notice to all owners and occupants of the property which lies within 300 feet of the street or alley to be vacated. The said notice shall contain the statement that a petition has been filed to vacate the street or alley described in the notice, together with a statement of the time and place fixed for the hearing of the petition.

In all cases where the proceeding is initiated by the City Council without a petition having been signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated, notice shall be sent as provided above. Failure to send notice by mail to any such property owner where the current address for such property owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed street vacation.

#### **C. PUBLIC NOTICE:**

Real Property Services in conjunction with the City of Tacoma Clerk's office issued the following public notice:

The Public Hearing Notice was posted June 3, 2015 at approximately 9:30 p.m. at locations 1 and 2 described below; the remaining notices were posted on June 4, 2015:

1. Placed yellow public notice sign at the southeast corner of the intersection of Commerce Street and South 15<sup>th</sup> Street.
2. Placed yellow public notice sign at the southwest corner of the intersection of Pacific Avenue and South 15<sup>th</sup> Street
3. Public notice memo placed into the glass display case located on the second floor of the Municipal Building.
4. Public notice memo placed into the glass display case located on the first floor of the Municipal building abutting the Finance Department.
5. Public notice memo advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596>
6. Public Notice advertised in the Daily Index newspaper.
7. Public Notice mailed to all parties of record within the 900 feet of vacation request.
8. Public Notice advertised on Municipal Television Channel 12.

#### **D. PURPOSE OF REQUEST:**

The Petitioner is requesting to vacate the right-of-way to cure a building foundation encroachment previously permitted under Street Occupancy Permit No. 140.

**E. HISTORY:**

The map of New Tacoma was filed in February 3, 1875 in Volume 1 of plats, page 1, records of Pierce County, Washington. The Waddell Building was originally built in 1890 by James Waddell; it has undergone several renovations and remodels over the last one hundred and twenty-five years.

During the most recent remodel of the Waddell Building in connection with the construction of the Marriott Hotel, a survey disclosed a one foot portion of the Waddell Building's foundation encroached into the right of way at Commerce Street, South 15<sup>th</sup> Street, and Pacific Avenue (Exhibit 3). As an interim measure, the City and Hollander Investments, LLC entered into a Development Agreement and Street Occupancy Permit (SOP 140) to allow the building foundation to remain in the right of way. It was mutually agreed the foundation encroachment would be cured via the street vacation process.

The Development Agreement was executed in April 2002 (Exhibit 4), and was amended in December 2002 (Exhibit 5). Covenant, Conditions and Restrictions (Exhibit 6), and the Street Occupancy Permit (Exhibit 7) were also entered into December 2002.

**F. PHYSICAL LAND CHARACTERISTICS:**

Pacific Avenue, South 15<sup>th</sup> Street, and Commerce Street are fully improved streets with curb, gutter, and sidewalks. Pacific Avenue and Commerce Streets are relatively level. South 15<sup>th</sup> Street from Commerce Street to Pacific Avenue slopes downward toward Pacific Avenue, and link light rail runs on Commerce Street.

**G. APPLICABLE SECTIONS OF THE OFFICIAL CODE OF THE CITY OF TACOMA:**

**9.22.010 PETITION TO VACATE AUTHORIZED:** The owners of an interest in any real estate abutting on any street or alley who may desire to vacate any street or alley, or any part thereof, shall petition to the City Council to make vacation in the manner hereafter provided in this chapter and pursuant to RCW 35.79 or the City Council may itself initiate by Resolution such vacation procedure. The City Council shall require the petitioners to compensate the City in an amount which equals one-half of the appraisal value of the area vacated; provided that if the street or alley has been a public right of way for 25 years or more, the City shall be compensated in an amount equal to the full appraised value of the area vacated; provided that when the vacation is initiated by the City or the City Council deems it to be in the best interest of the City, all or any portion of such compensation may be waived. Except as provided below, one-half of the revenue received hereunder shall be devoted to the acquisition, improvement, and maintenance of public open space land and one-half may be devoted to transportation projects and the management and maintenance of other City owned lands and unimproved rights-of-way.

In the case of vacations of rights-of-way in the tide flats area, defined as easterly of the Thea Foss Waterway (inclusive of the Murray Morgan Bridge), northerly of State Route 509 and westerly of

Marine View Drive, the total revenue received hereunder shall be devoted to transportation projects in the tide flats area.

9.22.040 PUBLIC'S RIGHT TO TRAVEL – UTILITIES: Vacation of any portion of a street that is designated as an arterial under Section 11.05.490 of the Municipal Code shall be of a minor nature only and shall not unreasonably limit the public's right to travel upon said street or interfere with the ancillary right to occupy said street for utility purposes.

CRITERIA: Section 9.22.070 of the Official Code of the City of Tacoma. The following criteria have been considered:

1. That the vacation will provide a public benefit and/or will be for a public purpose.
2. That the right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole.
3. That the public need shall not be adversely affected.
4. That the right-of-way is not contemplated or needed for future public use.
5. That no abutting owner becomes landlocked or his access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.
6. That vacation of right-of-way shall not be in violation of RCW 35.79.035

**Regarding the above Criteria, Real Property Services finds the following:**

1. The vacation is a public benefit because:
  - a. Completes terms agreed to by the City and Hollander Investments, LLC in the Hollander Investments Inc. Development Agreement regarding the foundation footing encroachment.
  - b. The Hollander Investments Inc. Development Agreement was an effort to facilitate and encourage economic development, and the completion of the vacation is an example of the City's continued commitment to supporting economic development within the City; and
  - c. Returns property to the tax rolls.
2. City of Tacoma Traffic Engineering has been consulted regarding this petition and does not object to the vacation.
3. No general public access will be impaired by this vacation action.
4. The vacation area is not contemplated or needed for future public use as a right of way.
5. No abutting owner, not contemplated under this development project, becomes landlocked nor will their access be impaired.
6. The vacation area is not close to a body of water as contemplated under RCW 35.79.035.

## H. PROJECT RECOMMENDATIONS:

As part of the City's review process for street vacation petitions, notice of this application was mailed to various City departments as well as many outside quasi-governmental agencies. These agencies, as noted below, have provided comments and recommended conditions to the Real Property Services Division. These comments, where appropriate, have been incorporated in the "Recommended Conditions of Approval" section of this preliminary report.

Aerial Maps – Exhibit 2  
Marriot Hotel Survey: 2006 (1515 Commerce Street) – Exhibit 3  
Hollander Investments, Inc. Development Agreement – Exhibit 4  
First Amendment to Hollander Investments Development Agreement – Exhibit 5  
Covenants, Conditions, and Restrictions – Exhibit 6  
Street Occupancy Permit 140 – Exhibit 7

PW Traffic – No Objection  
Tacoma Water – No Objection  
Tacoma Power – No Objection  
Environmental Services – No Objection  
Tacoma Fire – No Objection  
Public Works/LID – No Objection  
Comcast Communications – No Objection  
Puget Sound Energy – No Objection  
Pierce Transit – No Objection  
Century Link – No Objection

## I. RECOMMENDED CONDITIONS OF APPROVAL:

Should this street vacation request be approved, the Real Property Services Department of Public Works recommends that the following conditions be made conditions of approval:

### 1. PAYMENT OF FEES

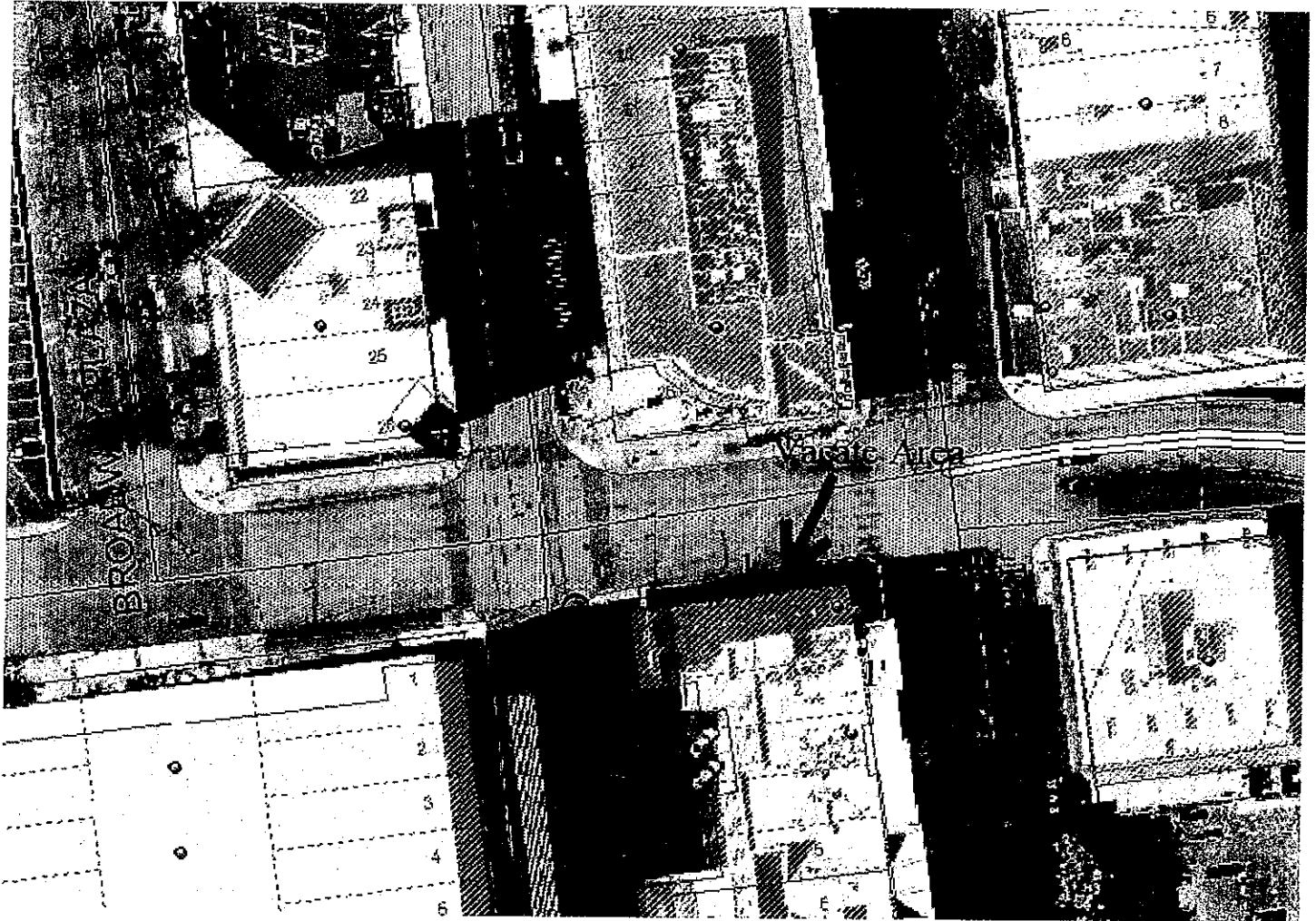
The petitioner shall compensate the City in an amount equal to the full appraised value of the area vacated. One-half of the revenue received shall be devoted to the acquisition, improvement and maintenance of public open space land and one-half may be devoted to transportation projects and /or management and maintenance of other City owned lands and unimproved rights-of-way. *TMC 9.22.010*

## 2. PUBLIC COMMENT

Real Property Services received no public comment.

The applicant shall comply with all City regulations for any future use of the subject site.

ATTACHMENT: Vacation Jacket containing all pertinent maps and papers.



TACOMA HOSPITALITY, LLC

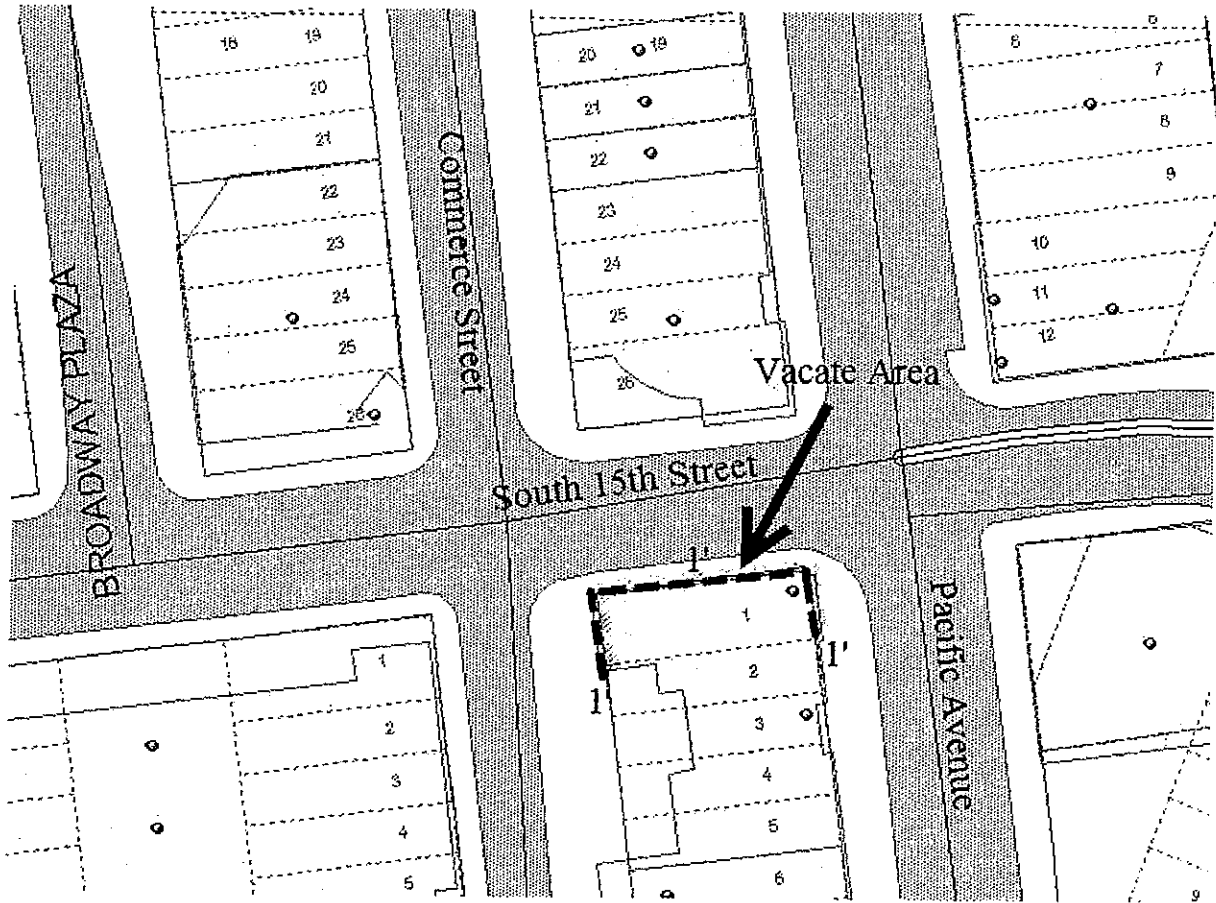
STREET VACATION NO. 124.1356

A 1 FOOT PORTION OF COMMERCE STREET, SOUTH 15<sup>TH</sup> STREET, AND PACIFIC AVENUE

SW 1/4 SEC. 04, T20N, R03E

NOT TO SCALE

**EXHIBIT 2**



TACOMA HOSPITALITY, LLC

STREET VACATION NO. 124.1356

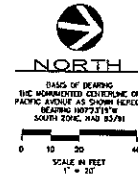
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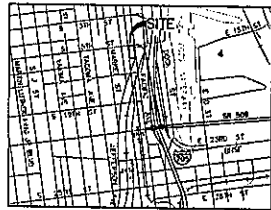


**ALTA/ACSM LAND TITLE SURVEY**  
 A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER,  
 OF SECTION 4, TOWNSHIP 20 NORTH, RANGE 3 EAST, W.M.,  
 CITY OF TACOMA, PIERCE COUNTY, WASHINGTON.



**Exhibit 3**

**VICINITY MAP**



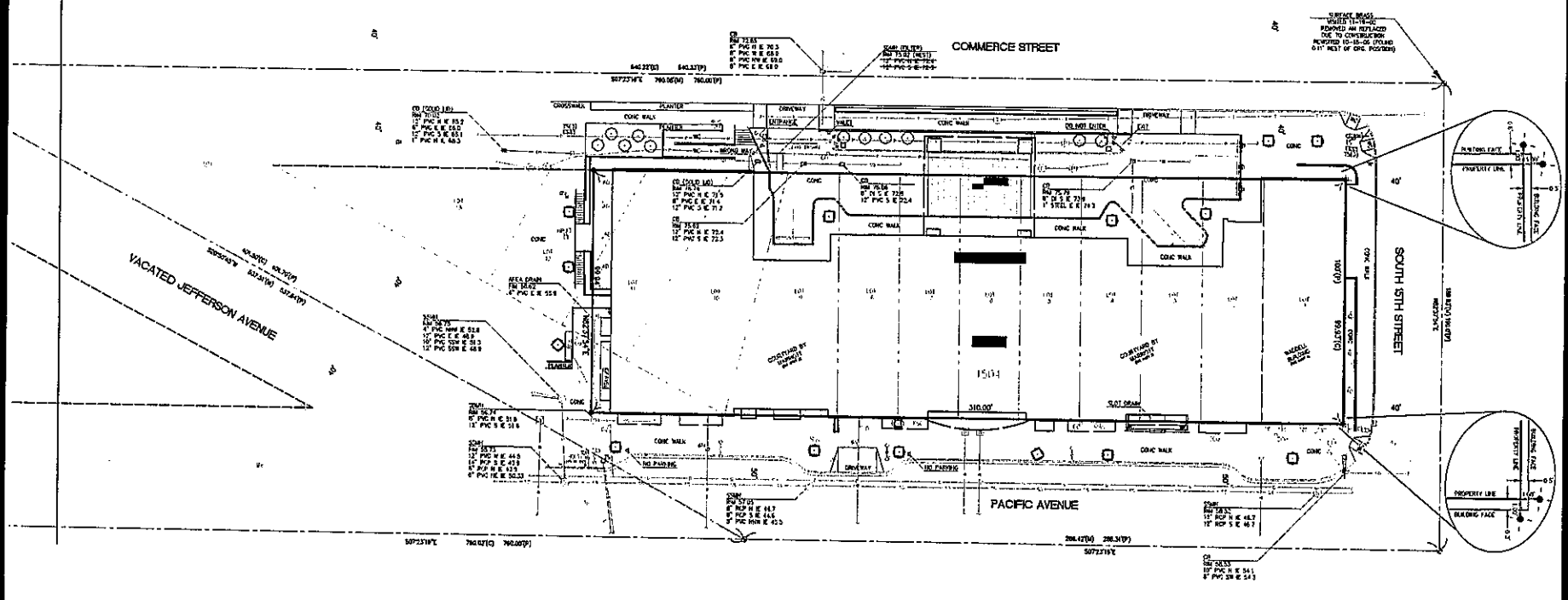
SEE SHEET 1 OF 2  
MATCH LINE

SYMBOLS		ABBREVIATIONS		LINETYPES	
	SECTION CORNER (FOUND AS NOTED)	(C)	CALCULATED	---	SANITARY SEWER
	QUARTER CORNER (FOUND AS NOTED)	(M)	MEASURED	---	STORM DRAIN
	SET LEAD AND FLAG IN CONCRETE	(M)	MEASUREMENT	---	NATURAL GAS
	SIGN POST	(A)	ASPHALT	---	UNDERHEAD POWER
	BOLLARD (GUARD POST)	(C)	CATCH BASIN	---	UNDERGROUND TELEPHONE
	DECIDUOUS TREE	(C)	CURB AND GUTTER	---	DOWN TO WATER
	CATCH BASIN	(C)	CONCRETE	---	TRAFFIC STOPPING
	LIGHT POLE	(C)	INHERIT ELEVATION	---	EDGE OF PUBLIC RIGHT-OF-WAY
	DITCH MARK	(R)	REINFORCED CONCRETE PIPE	---	PROPERTY LINE
	GAS METER	(SM)	STORM DRAIN MANHOLE	---	
	STORM CLEAN OUT	(SM)	SANITARY SEWER MANHOLE	---	
	SEWER CLEAN OUT	(MC)	WHEEL CHAIR RAMP		
	WATER VAULT				
	TELEPHONE MANHOLE				
	STREET LIGHT				
	LAMPPOST				
	ELECTRICAL UTILITY BOX				
	UTILITY POLE				
	WATER METER				
	FIRE HYDRANT				
	SANITARY SEWER MANHOLE				
	STORM DRAIN MANHOLE				
	TRAFFIC SIGNAL BOX				
	FLAGTER BOX				
	AREA DRAIN				
	HOSE BIB				
	IRRIGATION CONTROL VALVE				
	IRRIGATION CONTROL BOX				

**CERTIFICATION**

I, HOLLANDER INVESTMENTS, BOOR TRUCK COMPANY,  
 DO HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF,  
 ACCORDING TO THE ORIGINAL, STRAIGHTENED COPY OF SURVEYORS PRACTICES IN THE STATE OF  
 WASHINGTON, THIS MAP OR PLAN AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN  
 ACCORDANCE WITH TERRITORIAL STATUTES AND THE REQUIREMENTS FOR ALTA/ACSM LAND TITLE  
 SURVEYS, SIMILARLY ESTABLISHED AND ADOPTED BY ALTA AND WETA IN 2008 AND INCLUDE  
 ITEMS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

NEW TACOMA  
BLOCK  
1504



ALTA/ACSM LAND TITLE SURVEY  
**MARriot HOTEL**  
**1515 COMMERCE STREET**  
 TACOMA, WASHINGTON  
 HOLLANDER INVESTMENTS



**DAVID EVANS AND ASSOCIATES INC.**  
 2020 Pacific Hwy, Suite 300, Tacoma, WA 98402  
 Phone: 252.627.0700

REVISIONS: APPD.  
 DATE: OCTOBER 24, 2008  
 DESIGN:  
 DRAWN:  
 CHECKED:  
 REVIEWED:  
 PROJECT NUMBER: **HON0000.0001**  
 SHEET NO. **1**

**HOLLANDER, INVESTMENTS, INC.  
DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is made as of this 5<sup>th</sup> day of April 2002, 2004, between the City of Tacoma ("City"), a Washington first-class City, acting in its proprietary capacity only, and Hollander Investments, Inc. ("Hollander"), a Washington corporation.

**RECITALS**

**WHEREAS**, on May 25, 1999, the City Council passed Ordinance No. 26428, which declared the new Tacoma Convention Center ("Convention Center") a major, independent construction special project of limited duration and authorized City staff to proceed with preconstruction activities for this purpose, and

**WHEREAS** additional hotel rooms adjacent to the Convention Center will support Convention Center operations and economic development, and

**WHEREAS** Hollander has developed floor plans and elevations for a 150- to 175-room, select-service hotel located between Pacific Avenue and Commerce Street and South 15th and South 17th Streets, including renovation of the Waddell Building, and

**WHEREAS** the City and Hollander have identified the general terms and conditions of the development of a select-service hotel adjacent to the Convention Center in a Letter of Intent, and

**WHEREAS**, by Resolution No. 35279, adopted September 11, 2001, the Tacoma City Council approved the authorized execution of the Letter of Intent between the City and Hollander. The resolution further authorized the proper officers of the City to negotiate agreements for the proposed site for the Project, which agreements are subject to further City Council approval, and

**WHEREAS** the City and Hollander intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Project, and

ORIGINAL

**WHEREAS** the Project is a private undertaking to be contracted, constructed, and operated by Hollander with Hollander's resources and will provide a significant redevelopment of the Property with accompanying public benefits;

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual undertaking and promises contained herein and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Project upon the Property and as a direct benefit to the City and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

### **Section 1. Definitions.**

In addition to the terms defined in the recitals above, the following terms shall have the meanings set forth below:

**"Council"** means the Tacoma City Council.

**"CCRs"** means that certain Declarations of Covenants, Conditions, Restrictions, and Easements to be recorded against the Property in the Official Records of Pierce County, Washington.

**"Construction Schedule"** means the schedule for construction of the Improvements approved as part of the Construction Plans.

**"Design Guidelines"** means, collectively, the Covenants, Conditions and Restrictions, the City of Tacoma Municipal Code, the City of Tacoma Land Use Regulatory Code, and other Legal Requirements that affect the Project and the Property.

**"Design Principles"** means the principles and objectives for the design of the hotel and related improvements agreed to by the parties and attached hereto as Exhibit "E."

**"Effective Date"** means the date set forth in the first paragraph of this Agreement.

**"Environmental Standards"** means all federal, state, and local environmental laws and ordinances and all regulations promulgated thereunder, whether currently in effect or enacted or amended from time to time in the future

including, but not limited to, the Endangered Species Act; the Resource Conservation and Recovery Act at 42 U.S.C. § 6921 et. seq.; the Comprehensive Environmental Response, Compensation, and Liability Act at 42 U.S.C. § 9601 et. seq.; the Clean Air Act at 42 U.S.C. § 7401 et. seq.; the Federal Water Pollution Control Act, as amended, at 33 U.S.C. 1318; the Toxic Substances Control Act at 15 U.S.C. § 2601 et. seq.; the Shoreline Management Act, Ch. 90.58 RCW; the Hazardous Waste Management Act, Ch. 70.105 RCW; the Clear Air Act, Ch. 70.94 RCW; the Water Pollution Control Act, Ch. 90.48 RCW; the Model Toxic Substances Control Act at RCW 70.105.D, et seq., and also including, but not limited to, any guidelines, levels, and standards currently in effect or enacted or amended from time to time in the future by the applicable federal, state, or local regulatory authority for addressing any contamination of any sort.

"Event(s) of Default" shall be as defined in Section 12 therein.

"Force Majeure" shall have the meaning given in Section 15.1 herein.

"Governmental Authorities" means any board, bureau, commission, department, or body of any local, municipal, county, state, or federal governmental or quasi-governmental unit, or any subdivision thereof, or any utility provider serving the Property, having, asserting, or acquiring jurisdiction over or providing utility service to the Project, the Property and/or the management, operation, use, environmental cleanup, or improvement thereof.

"Hotel Affiliation" means franchise or membership with a recognized national franchise or lodging organization with access to the system's reservations, marketing and purchasing programs.

"Improvements" means all buildings, structures, improvements, and fixtures placed or constructed in, under, or upon the Property.

"Legal Requirements" means all local, county, state and federal laws, ordinances and regulations, and other rules, orders, requirements, and determinations of any Governmental Authorities now or hereafter in effect, whether or not presently contemplated, applicable to the Property, the Project or their ownership, operation or possession including, without limitation, all those relating to parking restrictions, building codes, zoning or other land use matters, the Americans with Disabilities Act of 1990, as amended, the Protective Covenants, life safety requirements and environmental laws, with respect to the handling, treatment, storage, disposal, discharge, use, and transportation of hazardous substances.

"Limited Service Hotel" means a rooms only operation, although some limited service hotels provide limited food and beverage, meeting space, recreational facilities.

"Mortgagee" means the holder of a first mortgage or deed of trust ("Mortgage") encumbering Hollander's interest in any portion of the Property; the proceeds of which are used to finance or refinance the construction of Improvements.

"Project" means the development of the Property, including construction of all Improvements and all related obligations of Hollander under this Agreement.

"Project Schedule" means the schedule of completion of the Project attached hereto as Exhibit "D."

"Property" means the real property described in Exhibit "A" attached hereto.

"Property Scope" shall mean the landscaping of all above-ground or outdoor public or private improvements and lighting, public restrooms, outdoor furniture, and public artwork.

"Protective Covenants" means, collectively, the CCRs, Easements, and the other easements, covenants, and restrictions, now or hereafter recorded, against any part of the Property in the official records of Pierce County, Washington.

"Substantial completion" or "substantially complete" means the date on which all of the following have occurred: (i) the Improvements required to be developed by this Agreement are complete according to approved Plans, except for punchlist items that do not substantially prevent the use of the Improvements for their intended purposes; and (ii) the City has issued a temporary or final certificate of occupancy for the building portions of the Improvements.

## **Section 2. Intent and Relations.**

2.1 Generally. Pursuant to this Agreement, Hollander will construct a select-service hotel that may include commercial, office and/or retail space. This Agreement is intended by the parties to establish the design, development, and performance criteria for the Project. Except for demolition and site preparation in accordance Paragraph 3.5 herein, the parties agree that Hollander has sole responsibility for construction, obtaining all necessary permits and approvals, and complying with all Legal Requirements as they relate to ownership, construction, and operation of the Project. Hollander shall, at its own cost, furnish all plans, engineering, supervision, labor, material, supplies, and equipment necessary for

completion of the Project. The City has entered into this Agreement relying on Hollander's covenants that it will promptly design and construct the Project.

2.2 Standards. Hollander shall perform the terms of this Agreement according to the following standards:

2.2.1 Standards. To ensure that a change in the status of the hotel doesn't compromise the integrity or quality of the surrounding developments, the quality and service levels of the proposed Hotel Affiliation should be at or above the three-diamond level established by AAA, and the facility must maintain this quality and service level for the duration of its operation as a lodging facility. Examples of acceptable affiliation and brands include mid-tier, limited, full, or focused-service lodging facilities such as Courtyard by Marriott, Hilton Garden Inn, Wingate Inn, Hampton Inn, or facilities of comparable price, quality, and affiliation.

2.2.2 Affiliation Approval. Prior to commencement of construction, the proposed Hotel Affiliation shall be submitted in writing by Hollander for approval by the City Manager or his or her designee. The City will review the level of quality and service of the proposed Hotel Affiliation, and in its sole discretion, approve or disapprove of the proposed affiliation in writing within thirty (30) days of submission. In the event that the City fails to approve or disapprove the Hotel Affiliation within thirty (30) days, the City will be conclusively deemed to have approved the affiliation. Additionally, a covenant requiring approval by the City for any change in Hotel Affiliation will be included in the CCRs and be recorded to run with the land permanently securing the City's right to approve any change in Hotel Affiliation.

The Hotel will be required to meet the following criteria:

- (a) the proposed hotel will be affiliated with a recognized franchise or lodging organization and will have access to the system's reservations, marketing, and purchasing programs;
- (b) the proposed hotel's physical plant will be of high quality and an adequate program of periodic maintenance and replacement of property and equipment will be implemented to ensure high-quality guest facilities at all times;
- (c) the proposed hotel will be operated by a competent and experienced management team;

2.2.3 All construction hereunder shall comply with and be performed in accordance with this Agreement including the Design Principles, the

Design Guidelines, and all Legal Requirements, and be free and clear of all liens (other than those contemplated by this Agreement).

2.2.4 Hollander agrees to diligently design, construct and complete the Improvements in a good and workmanlike manner and of good quality.

2.3 Project Schedule: The Project Schedule is attached hereto as Exhibit "D." Hollander shall comply with the Project Schedule in completing the Project. The Project Schedule may be modified by mutual agreement of the parties.

### **Section 3. Development.**

3.1 Generally. Hollander agrees that once construction has begun on Improvements to the Property, subject only to Force Majeure, it will proceed diligently with such construction until all such Improvements have been fully completed.

3.2 Schedule of Development. Subject only to an agreed modification of this Development Agreement, the parties agree that the schedule of development is as follows:

3.2.1 Feasibility Period. As provided in the Purchase and Sale Agreement.

3.2.2 Closing. As provided in the Purchase and Sale Agreement.

3.2.3 Application for Building Permits. Not later than May 31, 2003, Hollander shall apply for all necessary building permits for the Project.

3.2.4 Commencement of Construction. Hollander shall commence construction of Improvements on the Property not later than August 31, 2003. For the purposes of this Agreement, "commencement of construction" shall mean completion of all site preparation work required of Hollander and actual commencement of installation and construction of physical improvements other than utilities.

3.2.5 Opening of the Project. The Project will be open for business no later than September 30, 2004.

Any failure to adhere to this schedule will be deemed to be an event of default, will trigger reversion of the property as described in Paragraph 7, of the Purchase and Sale Agreement "Obligation to Construct."

3.3 Public Contract Requirements.

Hollander will comply with the City's Local Employment Apprenticeship Program ("LEAP") during construction of the Project.

3.4 Parking. For so long as Hollander operates a limited-service hotel on the Property and the City operates public parking facilities, the City shall furnish Hollander and its successors and assigns with up to 80 parking permits for parking within one block of the property in accordance with the terms of the Agreement for Joint Use of Parking. A combination of surface and structured parking may be used to meet the requirement.

3.5 Site Preparation. Prior to closing of the Purchase and Sale Agreement on the Property, the City will perform the following site preparation work on the Property:

3.5.1 Demolition of existing structures, excluding the Waddell Building at South 15th and Pacific Avenue. For purposes of this Agreement, Demolition shall mean demolition pursuant to the terms, conditions, and specifications of the City's Bid Package #101 Building Demolition and Hazardous Materials Abatement, October 8, 2001.

3.5.2 Grading of the Property pursuant to the terms, conditions, and specifications of the City's Bid Package #101 Building Demolition and Hazardous Materials Abatement, October 8, 2001.

3.5.3 Survey the Property and mark the property corners.

3.5.4 Removal and disposal of hazardous materials from the Waddell Building, located at South 15<sup>th</sup> Street and Pacific Avenue, according to the terms, conditions and technical specifications of the City's Bid Package #101 Building Demolition and Hazardous Materials Abatement, October 8, 2001. The City agrees to indemnify and hold Hollander harmless from and against any claims, judgements or other impositions arising from the City's removal and disposal of hazardous materials from the Waddell Building.

3.6 Entry Easement. The City and Hollander agree to establish a street occupancy permit for a hotel *porte cochere*. The final terms and conditions of those easements will be determined through good faith negotiation and subject to mutual agreement. The cost of such permit shall be deemed to be included in the consideration paid by Hollander under the Purchase and Sale Agreement.



3.7 Off-site Improvements. As part of a street improvement project that will be conducted concurrently with construction of the Convention Center, the City will make the following right-of-way improvements to the extent deemed necessary by the City in the vicinity of the Property:

3.7.1 Expansion of the right-of-way on Commerce Street in coordination with Hollander project schedule as more specifically described in Exhibit "B," attached hereto.

3.7.2 Reinforced earth-retaining, or geo-textile wall in Commerce Street right-of-way, independent of hotel building foundation, OR, a pro rata share of hotel foundation retaining wall system, whichever is least expensive.

3.7.3 Repair or replacement of sidewalks, curb, and gutter on Commerce Street, 15<sup>th</sup> Street, and Pacific Avenue.

3.7.4 Landscaping and lighting required by City code

3.7.5 Traffic safety improvements to facilitate safe vehicular and pedestrian movements.

3.7.6 Synchronization of traffic signals within the light rail corridor between Pacific Avenue/South 17th and Commerce/South 15th Street.

3.8 Plaza Coordination. Both parties agree to work in good faith to coordinate design and construction issues to integrate the southern end of the hotel into the proposed plaza .

3.9 HUD Loan. Upon Hollander's written request, the City will apply for a federal Housing and Urban Development ("HUD") Section 108 loan in the amount of up to Eight Hundred Thousand Dollars (\$800,000) to assist with the Project. The availability of the funds, allowable uses for the funds, and terms and conditions of the loan will be determined by applicable law and good faith negotiation.

3.10 Nondiscrimination. In the implementation of this Agreement, including construction of all Improvements and any leasing of the Project, neither party shall discriminate against any person or entity by reason of race, creed, national origin, sex or religion. In the event of a breach of any of these nondiscrimination covenants, subject to the cure provisions of Section 13 hereof, the City shall have the right to exercise all of its remedies for default hereunder.

3.11 Governmental Approvals. Hollander shall apply, at its sole cost, to the appropriate Governmental Authorities or third parties for, and shall diligently pursue and obtain, all permits, licenses, permissions, consents, or approvals required in connection with the construction of the Improvements except for demolition and site preparation in accordance with Paragraph 3.5 herein. The City will cooperate with Hollander to obtain all such permits, licenses, permissions, consents, and approvals, but without liability, cost, or expense to the City.

3.12 Preparation of Site; Utilities. Except as provided herein, the City shall not be responsible for any demolition or site preparation in connection with the Project or any existing Improvements on the Property. Public utilities exist in the vicinity of the Property. Hollander is responsible for connecting utilities to the project. Hollander shall make arrangements for private utility services directly with private utility service providers. Any costs of installation, connection, relocating, or upgrading shall be paid by Hollander including, but not limited to, water, sanitary sewer and storm and sewer mains, streetlights, traffic lights, , electric utilities, telecommunications and fire hydrants.

**Section 4. Disclaimer of Obligations, Indemnity.**

4.1 As Is. Except as set forth herein and in the Purchase and Sale Agreement, the City makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Property or structures thereon for any improvements to be constructed by Hollander; and, except as set forth herein and in the Purchase and Sale Agreement, Hollander warrants that it has not relied on representations or warranties, if any, made by the City as to the physical or environmental condition of the Property or the structures thereon for any improvements to be constructed by Hollander.

4.2 Approvals. Approval by the City of any item pursuant to the Purchase and Sale Agreement, or this Development Agreement shall not constitute a representation or warranty by the City that such item complies with Legal Requirements, and the City assumes no liability with respect thereto. Notwithstanding any provision of this Agreement to the contrary, the City is under no obligation or duty to supervise the design or construction of the Improvements. The City's approval of the Plans shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or any obligation of the City to insure that work or materials are in compliance with the Plans or any building requirements imposed by a governmental entity. The City is under no obligation or duty and disclaims any responsibility to pay for the cost of construction of the Project, except for demolition and site preparation in accordance with Paragraph 3.5 herein; the cost of which shall at all times remain the sole liability of Hollander.

#### 4.3 Indemnification of the City.

4.3.1 Hollander shall indemnify, defend, and hold the City harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with or arising out of Hollander's ownership of the Property or the construction of the Improvements, including any act or omission of Hollander or its members, agents, employees, representatives, contractors, subcontractors, successors, assigns or invitees, on or with respect to the Property.

Promptly following receipt of notice, an indemnitee hereunder shall give Hollander written notice of any claim for which Hollander has indemnified it hereunder, and Hollander shall thereafter vigorously defend such claim, at its sole cost, on behalf of such indemnitee and Hollander. Failure to give prompt notice to Hollander shall not constitute a bar to the indemnification hereunder unless such delay has prejudiced Hollander in the defense of such claim. If Hollander is required to defend any action or proceeding pursuant to this Section 4.3 to which action or proceeding the City is made a party, the City shall be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing; and to the extent the City is indemnified under this section, Hollander shall bear the reasonable cost of the City's defense, including reasonable attorneys' fees and costs. No settlement of any nonmonetary claim shall be made without the City's written approval, not to be unreasonably withheld, conditioned, or delayed.

4.3.2 Hollander agrees to include in each of its construction contract(s) for construction of the Project that if there is liability for damage or injury during construction, each contractor waives immunity under the Workers' Compensation Laws of the state of Washington, Title 51 RCW, for claims brought by its employees against Hollander and the City; and, further, each contractor shall agree to indemnify and hold Hollander and the City harmless for damages attributable to the contractor's negligence.

4.3.3 Permits. Hollander acknowledges that the City has not made any representation or warranty with respect to Hollander's ability to obtain any permit or approval or to meet any other requirements for development of the Property or Project. Nothing in this Agreement is intended or shall be construed to require that the City exercise its discretionary authority under its regulatory ordinances to further the Project nor binds the City to do so. Hollander understands that the City will, except as expressly set forth herein, process applications for permits and approvals in accordance with its normal processes.

**Section 5. Environmental Indemnification.**

5.1 Hollander Investigation. Hollander acknowledges that it will have diligently investigated to its full satisfaction prior to Closing the physical condition of the Property including, specifically, but without limitation, the presence on the Property of one or more releases of hazardous substances (as such term is defined in Washington's Model Toxics Control Act ("MTCA"), RCW 70.105.D.020, in excess of MTCA level Method C Industrial Cleanup Standards, and all other matters that, in Hollander's judgment, affect Hollander's use of the Property and Hollander's willingness to purchase the Property. Hollander further acknowledges that neither the City, nor any employee, officer, agent, or representative has, other than as expressly set forth in this Agreement or the Purchase and Sale Agreement, made any representations or warranties whatsoever regarding the Property or any facts relating thereto.

**Section 6. Certificate of Completion.**

6.1 When Hollander is Entitled to Certificate of Completion. Upon substantial completion of the Improvements on the Property and satisfaction of the other conditions of this Section 6, the City will furnish Hollander with a recordable Certificate of Completion, substantially in the form attached hereto as Exhibit "C." Notwithstanding the foregoing, the City shall not be required to issue the Certificate of Completion if Hollander is not then in material compliance with the terms and conditions of this Agreement. In addition, if punchlist items remain when Hollander requests the Certificate of Completion, the City may require, as a condition to the issuance thereof, that Hollander post a bond or provide other financial assurance reasonably satisfactory to the City (which could include assurances provided to the City for the same items) to insure completion of the punchlist items, and Hollander agrees to proceed with all reasonable diligence to complete the punchlist items.

6.2 Meaning and Effect of Certificate of Completion; Termination of Agreement.

Issuance by the City of a Certificate of Completion shall terminate this Agreement and each of its provisions, except for the provisions that expressly survive termination of this Agreement.

6.3 Form of Certificate of Completion; Procedure if the City Refuses to Issue.

If the City legally refuses or fails to provide a Certificate of Completion in accordance with the provisions of this Section 6, the City, within 15 business days

after written request by Hollander for such Certificate of Completion, shall provide Hollander with a detailed statement indicating in what respects Hollander has failed to complete the Improvements in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts must be taken, in the opinion of City, to obtain such Certificate of Completion. Upon receipt of such detailed statement, Hollander shall complete the Improvements and cure the alleged default in a manner responsive to the stated reasons for disapproval or submit to binding arbitration pursuant to Section 6.4 herein the issue of whether the City has unreasonably withheld issuance of such Certificate of Completion. Failure by the City to furnish Hollander with such detailed statement within such 15-business day period shall be deemed an approval by the City of Hollander's request for Certificate of Completion.

6.4 Arbitration. Any controversy or claim arising out of this Agreement or the breach thereof (a "dispute") shall be settled by arbitration as provided below.

6.4.1 Selection of Arbitrator. If the parties are able to agree upon a single arbitrator within 20 days after written notice by one party to the other of its desire to arbitrate a dispute under this Section 6.4, then the dispute shall be submitted to and settled by that single arbitrator. Otherwise, any party (the "demanding" party) may notify the other party (the "noticed" party) in writing of its demand for arbitration, stating the question to be submitted for decision and appointing one arbitrator. Within 20 days after receipt of such notice, the noticed party shall appoint an arbitrator and notify the demanding party in writing of such appointment. If the noticed party fails within 20 days after receipt of such notice to name its arbitrator, the arbitrator of the demanding party shall select an arbitrator for the noticed party so failing; and if the arbitrator for the demanding party and the noticed party cannot agree on that selection, said arbitrator shall be appointed by the American Arbitration Association ("AAA") in compliance with the Rule of Appointment of Neutral Arbitrator upon written notice to all other parties. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the AAA rules pursuant to the Rule for Appointment of Neutral Arbitrator. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) who chose that arbitrator, or the AAA, as appropriate, shall appoint another to act in such arbitrator's place. Any arbitrator appointed by AAA under this Section 6.4 shall possess knowledge or experience of the building and construction industry.

6.4.2 Arbitration Procedures. Upon selection of the arbitrator(s), said arbitrator(s) shall determine the questions raised in said notice of demand for arbitration within 20 days, unless a different period of time is otherwise agreed upon by the parties. Said arbitrator(s) shall then give all parties reasonable notice

of the time (which time shall be within 30 days of the arbitrator(s) determination of the questions raised, unless a different period of time is otherwise agree upon by the parties) and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument. The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

After considering all evidence, testimony, and arguments, said single arbitrator or a majority of the board of arbitrators shall, within 30 days of completion of the hearing provided, promptly state its decision or award in writing. Said decision or award shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision upon any question submitted for the arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision immediately after receiving it.

6.4.3 Costs. Each party to the arbitration shall pay the compensation, costs, and expense of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by both parties to the arbitration.

## **Section 7. Contracting Requirements.**

The requirements of this Section 7 shall apply only until the Certificate of Completion is recorded.

7.1 Construction Performance and Payment Bond. Hollander shall, before commencing construction of any Improvements, provide or require its general contractor to provide a performance and payment bond, in an amount equal to the estimated total construction cost of such Improvements. Hollander may request the City, in its reasonable discretion, to waive or modify the foregoing requirements if Hollander demonstrates that the contractor selected by it has sufficient experience and financial position to make such requirements, as written, unnecessary.

## **Section 8. Indemnity From Liens.**

Except in connection with any Mortgages approved pursuant to the Financing Plan, in no event shall Hollander, prior to recording of the Certificate of Completion, cause any lien to attach to any part of the Property in connection with

any monetary obligation including, but not limited to, mortgages, deeds of trust, mechanics' liens, attachment liens, judgment liens, execution liens, utility liens, security interests, or encumbrances, unless Hollander first obtains the City's written approval thereto, which approval shall not be unreasonably withheld. Hollander shall indemnify and hold harmless the City from and against all mechanics', materialmen's and laborers' liens, and all costs, expenses, and liabilities arising from construction of Improvements upon the Property. Nothing contained in this Agreement shall be construed as the consent or request of the City, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment to the Project (or any part thereof). NOTICE IS HEREBY GIVEN THAT THE CITY WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS, EQUIPMENT FURNISHED OR TO BE FURNISHED TO HOLLANDER, OR ANYONE HOLDING AN INTEREST IN THE PROPERTY (OR ANY PART THEREOF) THROUGH OR UNDER HOLLANDER.

**Section 9. Insurance.**

The requirements of this Section 9, shall apply only until the Certificate of Completion is recorded.

9.1 Insurance Requirements. Hollander shall maintain and keep in force insurance covering all aspects of the construction activity on the Project including, but not limited to, the following requirements:

9.1.1 Builders All Risk Comprehensive Coverage. Hollander shall keep, or shall require its general contractor to keep, all Project components insured for Builders All Risk Comprehensive Coverage, including, fire, , and to include amounts sufficient to prevent Hollander from becoming a co-insurer under the terms of the applicable policies but in any event in an amount not less than 100 percent (100%) of the then full "Replacement Cost," being the cost of replacing the Project components, and all fixtures, equipment, improvements, and betterments thereto, less a reasonable deductible.

9.1.2 Commercial General Liability. Hollander shall carry and shall require its construction contractor to carry Commercial General Liability insurance providing coverage against claims for bodily injury, death, or property damage in connection with the Project with broad form liability and property damage endorsement, such insurance to afford minimum protection, during the term of the construction phase and, for the General Contractor, written for combined single limits of liability of no less than Ten Million Dollars (\$10,000,000), per occurrence.

9.1.3 Property Insurance. Upon completion of the construction of the Improvements and prior to the issuance of the Certificate of Completion,

Hollander shall carry property insurance covering the Improvements on such Property, including machinery insurance, in an amount equal to at least 100 percent (100%) of the replacement cost of all Improvements less a reasonable deductible. Such insurance shall contain coverage against loss or damage by perils no less broad than the now current edition of the ISO Special Form, 1985 Edition. Hollander shall be responsible for payment of any deductibles under said insurance policies and any costs of restoration resulting from any uninsured or underinsured losses. The requirements of this Section 9.1.3 shall be satisfied if and so long as a policy of Builder All Risk Comprehensive Coverage Insurance, as provided in Section 9.1.1, is effective and provides not less than the coverage required by this Section 9.1.3.

**9.2 Insurance Policies.** Insurance policies required herein:

9.2.1 Shall be issued by companies authorized to do business in the state of Washington with the following qualifications:

9.2.1.1 The companies must be rated no less than "A," as to general policy holders rating and no less than "X," as to financial category in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated.

9.2.1.2 The policies shall name the City as an additional insured through the date of issuance of a Certificate of Completion for liability purposes and as a loss payee.

9.2.1.3 The policies shall be issued as primary policies.

9.2.2 Each such policy or certificate of insurance mentioned and required in this Section 9 shall have attached thereto (1) an endorsement that such policy shall not be canceled or materially changed without at least 30 days prior written notice to Hollander and the City; (2) an endorsement to the effect that the insurance as to any one insured shall not be invalidated by any act or neglect of any other insured; (3) for the policies required of Hollander an endorsement pursuant to which the insurance carrier waives all rights of subrogation against the parties hereto; and (4) an endorsement pursuant to which this insurance is primary and noncontributory.

9.2.3 The certificates of insurance or other proof of insurance policies shall be furnished to Hollander and the City prior to commencement of construction under this Agreement. The certificate(s) shall clearly indicate the insurance and the type and amount and classification, as required for strict compliance with this Section 9.



9.2.4 Cancellation of any insurance or nonpayment by Hollander of any premium for any insurance policies required by this Agreement shall constitute an immediate Event of Default under Section 13 of this Agreement, if not cured within 15 days of receipt of notice from the City and/or notice of cancellation from the insurance carrier. In addition to any other legal remedies, the City, at its sole option after written notice as set forth above, may obtain such insurance and pay such premiums for which, together with reasonable costs and attorneys' fees, Hollander shall reimburse to the City.

9.3 Adjustments. The types of policies, risks insured, coverage amounts, deductibles, and endorsements may be adjusted from time to time as Hollander and the City may mutually determine.

## **Section 10. Destruction or Condemnation.**

10.1 Total or Partial Destruction. If the Improvements on the Property are totally or partially destroyed at any time during the term of this Agreement and the cost of reconstruction or restoration is less than One Hundred Fifty Thousand Dollars (\$150,000), and is an insured loss, Hollander shall reconstruct or repair the damage consistent with the terms of this Agreement within six months of the destruction. If the cost is \$150,000 or more, then Hollander shall have the discretion to reconstruct or repair the damage to the extent necessary and appropriate for purposes of the existing use, or Hollander may elect to not reconstruct or repair the Improvements by delivery of written notice to the City within 60 days after the destruction. If it so elects not to reconstruct, then Hollander shall, at its cost, promptly remove the damaged Improvements, secure the Property, clear the debris, and generally make the Property as safe and attractive as practical, given the circumstances.

In the event that Hollander elects not to repair the damage, no further development of the Property can occur without the prior approval of the City. This Agreement shall continue to restrict future development of the Property, and Hollander or any successor of Hollander shall obtain the City's approval of the redevelopment plan before the Property is redeveloped.

10.2 Condemnation. If, during the term of this Agreement, the whole or any substantial part of the Property is taken or condemned in the exercise of eminent domain powers (or by conveyance in lieu thereof), such that Hollander can no longer materially meet its obligations under this Agreement, this Agreement shall terminate upon the date when possession of the Property or portion thereof so taken shall be acquired by the condemning authority. As used herein, "substantial" shall be defined as reasonably preventing the conduct of Hollander's

ongoing and planned future activities as contemplated hereby. If a taking occurs that is not substantial, this Agreement shall continue in full force and effect as to the part of the Property not taken.

**Section 11. Right to Assign or Otherwise Transfer.**

Hollander represents that its purchase of the Property is for development and not for "land bank" speculation. Except as provided in this Section 11, Hollander shall not transfer the Property, or any portion thereof or interest thereon, without the prior express written consent of the City, which may be granted or withheld in the City's sole discretion.

**11.1 Transfers Before Certificate of Completion.**

11.1.1 Notwithstanding the foregoing, (a) transfers to a Mortgagee shall be permitted; (b) City may not withhold its consent to a transfer if Hollander clearly demonstrates that the proposed transferee is a real estate developer with demonstrated expertise, good reputation, not less than ten years of experience in the ownership and construction of mixed-use projects similar to the Project and equal to or greater than the size and cost of the Project and has a net worth sufficient, in the City's reasonable judgment, to perform all of Hollander's obligations hereunder and to operate the Project; and (c) transfers to affiliates or other related entities of Hollander in which Marlo and Betty Hollander hold a controlling interest shall be permitted.

"Transfer," as used herein, includes any sale, conveyance, transfer, ground lease, or assignment, whether voluntary or involuntary, of any interest in the Property and includes transfer to a Mortgagee or pursuant to a mortgage, transfer to a trustee in bankruptcy, receiver or assignee for the benefit of creditors, any merger, consolidation, liquidation or dissociation of Hollander, or any transfer of a controlling interest in the management of Hollander.

11.1.2 In the event of any transfer, Hollander shall deliver to the City (a) a copy of the document evidencing such transfer, including a suitable estoppel agreement(s), and (b) an assumption of all obligations of Hollander under this Agreement in form satisfactory to the City.

11.1.3 The transferee (and all succeeding and successor transferees) shall succeed to all rights and assume all obligations of Hollander under this Agreement, including any unperformed obligations of Hollander as of the date of such transfer. No transfer by Hollander, or any successor, shall release Hollander, or such successor, from any such obligations under this Agreement without the written consent and release of the City.

**Section 12. Default.**

Hollander's failure to keep, observe, or perform any of its duties or obligations under this Agreement shall be a default hereunder including, without limitation, any of the following specific events:

- 12.1 The failure of Hollander to substantially comply with the standards of performance for the Project as set forth in Section 2 of this Agreement.
- 12.2 The failure of Hollander to comply with the terms of any Financing Obligations.
- 12.3 The failure of Hollander to construct the Improvements substantially in accordance with the Plans.
- 12.4 The failure of Hollander to diligently prosecute construction and complete the Improvements in accordance with the Construction Schedule.
- 12.5 Conversion of any portion of the Property or the Improvements to any use other than the uses permitted by the CCRs, Design Guidelines, and all approved plans.
- 12.6 The failure of Hollander to satisfy the indemnities set out in this Agreement.
- 12.7 The making by Hollander of an assignment for the benefit of creditors, contrary to the terms of this Agreement, or filing a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to pay its debts, except as provided in Section 12.8.
- 12.8 The appointment of a receiver or trustee of the property of Hollander, which appointment is not vacated or stayed within 60 days, or the filing of a petition in bankruptcy against Hollander or for its reorganization under any bankruptcy or insolvency law which is not dismissed or stayed by the court within 60 days after such filing.
- 12.9 The failure of Hollander to provide, in a timely manner, and maintain any security required under this Agreement including, but not limited to, the guaranties and the construction performance bonds.
- 12.10 Any sale, assignment, or other transfer not previously approved by the City in accordance with Paragraph 11.1.1 herein.

12.11 The failure of Hollander to fully comply with the Development Schedule in Paragraph 3.2 of this Development Agreement.

Upon the happening of any of the above-described events, the City shall notify Hollander in writing of its purported breach, failure, or act above described. Hollander's failure to cure such breach, failure, or act within 30 days from receipt of such notice (or if such failure cannot reasonably be cured within 30 days, if Hollander fails to promptly commence within said 30 days and diligently pursue such cure to completion) shall be deemed an Event of Default hereunder.

### **Section 13. Remedies.**

13.1 Remedies Upon Default. If an Event of Default not cured within any applicable cure period shall occur, the City shall have all cumulative rights and remedies under law or in equity including, but not limited to, the following:

13.1.1 Damages. Hollander shall be liable for any and all damages incurred by the City.

13.1.2 Performance Bonds; Guaranties. The City shall be entitled to draw upon or foreclose all or any part of the bonds provided under this Agreement, commence an action for equitable or other relief, and/or proceed against Hollander and any guarantor for all direct monetary damages, costs, and expenses arising from the Event of Default and to recover all such damages, costs, and expenses, including reasonable attorneys' fees.

13.2 Copy of Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to Hollander with respect to any breach or default by Hollander in its obligations or covenants under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee at the last address of such holder shown in the records of City.

13.3 Mortgagee's Option To Cure Defaults. After any default in or breach of this Agreement not cured within any applicable cure period by Hollander or its successor in interest, each Mortgagee shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default within 30 days after Hollander's failure to cure said default or breach within any applicable cure period, and if permitted by its loan documents, to 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 on the Property according to the approved final Construction Plans. Any Mortgagee who shall properly complete the Improvements on the Property shall be entitled, upon written request made to the City, to issuance of a Certificate of Completion.

13.4 Amendments Requested by Mortgagees. The City agrees to execute amendments to this Agreement or separate agreements from time to time to the extent reasonably requested by a proposed Mortgagee, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of City or its interest in the Property or the Project under this Agreement and the other agreements referenced herein.

13.5 Provisions Surviving Termination. The following provisions of this Agreement shall survive any termination of this Agreement:

(i) Indemnification (Section 4.3, and 5.1) and Limitation on the City's Liability (Section 15.20). Upon termination of this Agreement, the Indemnification obligation set forth in Sections 4.3, and 5.1 shall remain with the parties then obligated thereunder, and such obligation shall not be assumed or deemed assumed by any subsequent owner of all or any portion of the Property.

#### **Section 14. Representations and Warranties.**

Each party hereby represents and warrants to the other that (a) it has full statutory right, power, and authority to enter into this Agreement and perform in accordance with its terms and provisions; (b) the individuals executing this Agreement on its behalf have the authority to bind and to enter into this transaction; and (c) it has taken all requisite action to legally authorize the execution, delivery, and performance of this Agreement.

#### **Section 15. Miscellaneous.**

15.1 Force Majeure. In addition to specific provisions of this Agreement, Developer shall not be deemed to be in default with regard to performance in accordance with the Construction Schedule where delays to performance due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation (including suits filed by third parties concerning or arising out of this Agreement), weather or soils conditions which necessitate delays, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts of the other party, acts or failure to act of any public or governmental entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform; provided that the lack of funds or financing of

Developer is not a cause beyond the control or without the fault of Developer ("*Force Majeure*"). An extension of time for *Force Majeure* will be deemed granted if notice by Developer claiming such extension is sent to City within a reasonable time and such extension of time is not rejected in writing by City within ten (10) days of receipt of the notice. Times of performance under this Agreement may also be extended in writing by City and Developer.

15.2 Estoppel Certificates. The City and Hollander shall, at any time and from time to time within fifteen (15) days after written request by the other, execute, acknowledge, and deliver to the party requesting same or to any prospective mortgagee, assignee, tenant, or other party reasonably entitled to request said Estoppel Certificate designated by Hollander, a certificate stating that (i) this Agreement is in full force and effect and has not been modified, supplemented, or amended in any way or, if there have been modifications, identifying such modifications; and if this Agreement is not in force and effect, the certificate shall so state; and (ii) to its knowledge, all conditions under the Agreement have been satisfied by the City or Hollander, as the case may be, and that no defenses or offsets exist against the enforcement of this Agreement by the other party or, to the extent untrue, the certificate shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same.

15.3 Entire Agreement. This Agreement and any collateral instruments referenced herein contain the entire agreement between the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them.

15.4 Modification. This Agreement may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this Agreement. The parties recognize that circumstances may change and that it may be in their mutual interest to amend the Construction Schedule from time to time. For this reason, each of the parties will in good faith consider changes to such schedule which may be proposed by the other during the term of this Agreement.

15.5 Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inference be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is explicitly permitted, such as in the case of a party being allowed to make a decision in its "sole judgment" or "sole discretion."

15.6 Successors and Assigns. 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 except that there shall be no transfer of any interest by any of the parties hereto except pursuant to the express terms of this Agreement. 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 its interest in compliance with the terms of this Agreement or under law.

15.7 Notices. All notices which may be or are required to be given pursuant to this Agreement shall be in writing and delivered to the parties at the following addresses:

To City:

City of Tacoma  
Attn: City Manager  
747 Market Street  
Tacoma, Washington 98402

To Hollander Investments, Inc.

Marlo G. Hollander  
Hollander Investments, Inc.  
119 North Commercial Street  
P.O. Box 2129  
Bellingham, WA 98227-2129

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three days after deposit, postage prepaid in the U.S. mail; (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier; (c) sent by facsimile transmission to the party and, in the case of the City, its counsel, receipt of which has been confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the next business day following confirmed receipt; or (d) hand delivered, in which case notice shall be deemed delivered when actually delivered. The above addresses and phone numbers may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

15.8 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

15.9 Waiver. No waiver by any party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the party

such member, official, or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official, or employee of either party shall be personally liable to the other or any successor in interest upon the occurrence of any default or breach by either party or for any amount which may become due to the other party or its successor or on any obligations under the terms of this Agreement.

15.16 Discrimination. Hollander, for itself and its successors and assigns, agrees that during the construction of the Project, it will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, marital status, handicap, or national origin.

15.17 Attorney's Fees. In the event any proceeding is instituted to interpret or enforce any provision or resolve any dispute under this Agreement including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the substantially prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other reasonable fees, costs, and expenses, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in federal bankruptcy courts, including those related to issues unique to bankruptcy law.

15.18 Nonwaiver of Government Rights. The parties understand that although the City is organized pursuant to the City of Tacoma Municipal Code, Ch. 1.60, the City, by making and entering into this Agreement, is not obligating the City to give governmental approvals, to take particular action, or to be financially responsible for any obligations of the City except as expressly set forth herein.

15.19 Captions; Exhibits. The headings and captions of this Agreement are for convenience of reference only and shall be disregarded in constructing or interpreting any part of the Agreement. All exhibits and appendices annexed hereto at the time of execution of this Agreement, or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

15.20 Limitation of the City's Liability. Notwithstanding any provision in this Agreement to the contrary, Hollander agrees that it shall look solely to the estate and interest of the City in its assets and properties for the collection of any judgment requiring the payment of money by the City or for the enforcement of any other judgment or remedy against the City and no other assets of the City,



including but not limited to tax receipts and revenues shall be subject to levy, execution, or other procedure for the satisfaction of Hollander's remedies.

15.21 Fair Construction; Severability. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the parties have been materially altered or abridged by such invalidation or unenforceability.

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

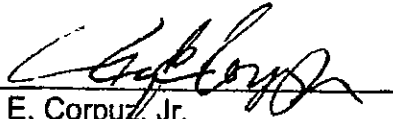
**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.**

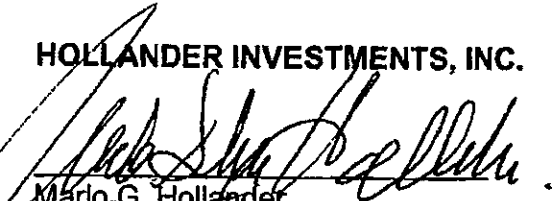
Signature Page to  
Hollander Development Agt.


**IN WITNESS WHEREOF**, the parties hereto have executed this document  
as of the day and year first above written.

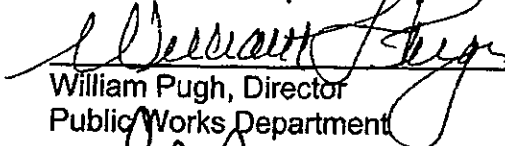
**CITY OF TACOMA**

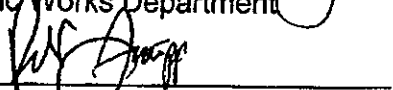
**HOLLANDER INVESTMENTS, INC.**

  
Ray E. Corpuz, Jr.  
City Manager

  
Mario G. Hollander  
Its President

  
Juli Wilkerson, Director  
Economic Development Dept.

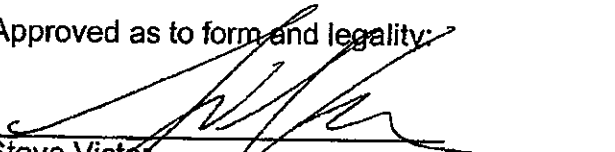
  
William Pugh, Director  
Public Works Department

  
Peter Luttrupp, Director  
Finance Department

Attest:

  
Doris Sorum, City Clerk

Approved as to form and legality:

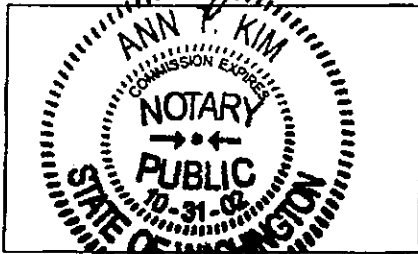
  
Steve Victor  
Assistant City Attorney

  
Andy Michels  
Risk Management

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that RAY E. CORPUZ, Jr., is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the City Manager of the City of Tacoma to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 4, 2002.



Ann J. Kim  
Notary Public  
Print/Type Name Ann T. Kim  
My commission expires 10/31/02

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )  
whatcom

I certify that I know or have satisfactory evidence that MARLO HOLLANDER is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the President of Hollander Investments, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 14<sup>th</sup>, 2002.



Barb Thompson  
Notary Public  
Print/Type Name BARB Thompson  
My commission expires 3-21-04

**EXHIBIT "A"**  
**Legal Description of Property**

**EXHIBIT 'A'**  
**LEGAL DESCRIPTION**

**HOTEL SITE LEGAL**

All that part of Lots 1 through 12, Block 1504, Map of New Tacoma and vacated Jefferson Avenue lying north of a line described as follows:

Commencing at the northwest corner of said Lot 1, thence south along the west line of said Block 1504 to a point 310 feet south, when measured at right angles to the north line of said Block 1504; thence parallel with said north line North  $82^{\circ}33'41''$  East, 99.96 feet to the east line of said Block 1504 extended south.

**EXHIBIT "B"**

**Site Map**



**EXHIBIT "C"**

**Form of Certification of Completion**

After recording return to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF COMPLETION**

**GRANTOR:** City of Tacoma

**GRANTEE:**

**Abbreviated Legal Description:**

**Assessor's Tax Parcel No(s):**

**Related Document:** Development Agreement (Doc. No. \_\_\_\_\_)

The CITY OF TACOMA, a Washington first-class City ("City"), hereby certifies that HOLLANDER INVESTMENTS, INC., a Washington corporation ("Hollander"), has satisfactorily completed construction of the Improvements on the Property described on Exhibit "A" attached hereto ("Property"), as such Improvements are described in the Development Agreement dated \_\_\_\_\_, 2002 ("Agreement"), which was recorded in the Records of the Pierce County Auditor, Washington, as Document No. \_\_\_\_\_, on \_\_\_\_\_, 200\_.

This Certificate of Completion is and shall be a conclusive determination that Hollander has satisfied, or the City has waived, each of the agreements, covenants, and conditions contained in the Agreement as to the development of the Improvements.

Notwithstanding this Certificate of Completion, Section 13.5 of this Development Agreement provides for the survival of certain covenants as between

ORIGINAL





**EXHIBIT "D"**  
**Project Schedule**









## **EXHIBIT "E"**

### **Design Principles**

The following design principles are meant to guide hotel design and convention center interface within the context of the Convention Center Master Plan:

#### **Hotel:**

1. Maximize number of hotel rooms adjacent to the Convention Center while managing construction costs and schedule.
2. Architectural form compatible with Convention Center and surrounding area.

#### **Urban Design:**

3. Activate all street level spaces: Pacific Avenue, Commerce Street, corner of 15th and Pacific (hotel lobby, retail or other commercial uses, etc.) and provide for a safe pedestrian environment.
4. Integrate hotel development edge with the Town Square. If possible, put eyes on the park and activity on the edge of the park to activate the space and improve security.
5. Honor or incorporate the 16th Street spine by exploring a number of ways to identify the pedestrian pathway as it moves down the hill--lighting, paving, architecture, signage, etc.--in such a way that the hill climb does not necessarily constrain the southern edge of the hotel or cause it to be built entirely north of the 16th Street spine.
6. Consider an architectural style that reflects the loft buildings or warehouse character of the area. Explore rhythm, modulation and façade treatment , i.e., large windows, brick, cornice, etc.
7. Explore ways to incorporate the Waddell Building into the hotel design while maintaining the historical integrity of the building's design.
8. Coordinate circulation issues such as points of arrival and departure, parking access, implications of proximity of light rail, etc.

Convention Center:

9. Preserve/enhance views from the Convention Center pre-function space.
  - a. If additional height is needed to gain hotel rooms, identify where height can be added and still protect the most important views from the Convention Center.
  - b. Explore ways to provide an aesthetically pleasing "fifth elevation"—the top of the building as seen from surrounding properties, while efficiently and effectively incorporating mechanical equipment and providing usable space for the hotel.





**RESOLUTION NO. 35407**

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WHEREAS, on May 25, 1999, the City Council passed Ordinance No. 26428, which declared the new Tacoma Convention Center ("Convention Center") a major independent construction special project of limited duration and authorized City staff to proceed with preconstruction activities for this purpose, and

WHEREAS increasing the number of hotel rooms adjacent to the Convention Center are necessary to support Convention Center operations and economic development, and

WHEREAS Hollander Investments, Inc. ("Hollander"), of Bellingham, Washington, has developed floor plans and elevations for a 175-room, select-service hotel located between Pacific Avenue and Commerce Street and South 15th and South 17th Streets, including renovation of the Waddell Building, and

WHEREAS the City and Hollander identified the general terms and conditions of the development of a select-service hotel adjacent to the Convention Center in a Letter of Intent, and

WHEREAS, by Resolution No. 35279, adopted September 11, 2001, the Tacoma City Council approved the authorized execution of the Letter of Intent between the City and Hollander. The resolution further authorized City staff to

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negotiate agreements for the proposed site for the project, which agreements are subject to City Council approval, and

WHEREAS City staff and Hollander have negotiated Purchase and Sale and Development Agreements for acquisition and development of the property by Hollander, and

WHEREAS the proposed Hollander hotel will provide a significant redevelopment of the property with accompanying public benefits, and

WHEREAS additional hotel rooms adjacent to the Convention Center will support Convention Center operations and economic development, and

WHEREAS the City Manager recommends, and the City Council finds, that the City-owned property located between Pacific Avenue and Commerce Street and South 15th and South 17th Streets, including the Waddell Building, is not required for City operations, and

WHEREAS the City Manager recommends, and the City Council finds, that entering into the agreements with Hollander is in the best interests of the City; Now, Therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:**

That the proper officers of the City are hereby authorized to execute a Purchase and Sale Agreement and a Development Agreement with Hollander Investments, Inc., for the purposes described herein, said documents to be substantially in the form of the proposed Purchase and Sale Agreement and Development Agreement on file in the office of the City Clerk.

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BE IT FURTHER RESOLVED that the City Council finds that the City-owned property located between Pacific Avenue and Commerce Street and South 15th and South 17th Streets, including the Waddell Building is not required for City operations.

BE IT FURTHER RESOLVED that entering into the Agreements with Hollander is in the best interests of the City.

DEC 18 2001

Adopted \_\_\_\_\_

Mike Cawd  
Mayor

Attest:

Doris Sorum  
City Clerk

Approved as to form and legality.

[Signature]  
Assistant City Attorney

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# REQUEST FOR ORDINANCE OR RESOLUTION

CITY CLERK USE

Request #:	8882
Ordinance #:	
Resolution #:	35407

1. DATE: November 19, 2001

2. REQUESTING DEPARTMENT/DIVISION/PROGRAM Tacoma Economic Development Department/ Public Works	3. CONTACT PERSON (for questions): J. J. McCament	PHONE/EXTENSION x5194
--	--	--------------------------

4. PREPARATION OF A RESOLUTION IS REQUESTED FOR THE CITY COUNCIL MEETING OF TUESDAY, DECEMBER 4, 2001.

5. SUMMARY TITLE/RECOMMENDATION: (A concise sentence, as it will appear on the Council Agenda)

Review Purchase & Sale Agreement and approve staff negotiations with Hollander Investments, Inc. to build approximately 175-room hotel and supporting services on Convention Center site.

6. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

Council approved a Letter of Intent on September 11, 2001, that directed staff to proceed with a Purchase & Sale agreement and development documents for the hotel site. Hollander Investments, Inc., has continued to work on floor plans and elevations for a select service hotel located between 15<sup>th</sup> Street and 17<sup>th</sup> Street on Pacific Avenue/Commerce Street including renovation of the Waddell Building.

7. FINANCIAL IMPACT: (Future impact on the budget.)

None.

8. LIST ALL MATERIAL AVAILABLE AS BACKUP INFORMATION FOR THE REQUEST AND INDICATE WHERE FILED:

Source Documents/Backup Material

Location of Document

Letter of Intent, September 11, 2001

TEDD

9. FUNDING SOURCE: (Enter amount of funding from each source)

Fund Number & Name:	State \$	City \$	Other \$	Total Amount
---------------------	----------	---------	----------	--------------

RECEIVED  
 OFFICE  
 11/20/01

If an expenditure, is it budgeted?  Yes  No Where? Org #

Acct #

10. ATTORNEY CONTACT: (Enter Name of Attorney that you've been working with) Steve Victor

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Juli Wilkerson <i>Juli Wilkerson</i>	Approved as to Availability of Funds	<i>[Signature]</i>
11. Department Director/Utility Division Approval	Director of Finance	City Manager/Director Utilities Approval

**FIRST AMENDMENT TO HOLLANDER INVESTMENTS  
DEVELOPMENT AGREEMENT**

**THIS AMENDMENT**, entered into this 14<sup>th</sup> day of December, 2002, by and between the City of Tacoma ("City"), a Washington first-class City, acting in its proprietary capacity only, and Hollander Investments, Inc. ("Hollander"), a Washington corporation.

WITNESSETH:

**WHEREAS**, the parties desire to amend the development agreement entered into on April 5, 2002 ("Agreement"). All provisions in the prior Agreement remain in effect except as expressly modified by this Amendment. The changes to the Agreement are as follows:

1. Pursuant to Section 3.4 of the Development Agreement, the Agreement for Joint Use of Parking is hereby attached as Exhibit 1 to this Amendment.

2. Section 3.6 is hereby amended to read as follows:

3.6.1 Porte Cochere. The City and Hollander agree to establish a street occupancy permit for a hotel *porte cochere*. The cost of such permit shall be deemed to be included in the consideration paid by Hollander under the Purchase and Sale Agreement.

3.6.2 Waddell Building Property Boundary. The City acknowledges that based on a city survey, three of the four corners of the Waddell Building are located in the public right-of-way. The City will address this issue as follows:

3.6.2.1 Prior to closing, the City will issue a Street Occupancy Permit for one foot of right of way abutting the present physical boundaries of the building on Commerce, 15<sup>th</sup>, and Pacific Avenue allowing the sale of the property to close. The permit will continue, or be re-issued, until the property vacation described in Section 3.6.2.2 below is complete. The cost of this permit shall be deemed to have been included in the purchase price.

3.6.2.2 After closing, Hollander will apply for, and the City will support a Street Vacation for the encroaching portions of the building to permanently provide clear title.

3.6.3.1 Subterranean Easement. The City shall grant an easement to Hollander for use of existing space beneath Commerce Street created by the vaulted sidewalk now in place and anticipated to be preserved by Hollander's construction of the hotel

1ST AMEND. TO HOLLANDER  
DEV. AGRMT.

ORIGINAL

Exhibit 5

driveway. Furthermore, in the event that the existing vaulted sidewalk on Commerce and 15th is replaced with a new vaulted sidewalk, the City will agree to an easement allowing Hollander to utilize the space beneath both Commerce Street and 15<sup>th</sup> Street for the duration of their ownership at no cost other than Hollander's improvements to the Waddell building and sidewalk, if any, described in 3.7.3 below. Hollander, and or assigns, agrees to assume all liability and indemnify, defend and hold harmless, the City, from any claim or damage arising out of Hollander's use of this space.

3.6.3.2 Air Easement. Subject to review of Hollander's building plans, the City will issue an aerial easement to accommodate any overhang from the building that would effect the sidewalk in the public right-of-way.

3. Section 3.7 is hereby amended to read as follows:

3.7 Improvements.

The City's participation in improvements in the vicinity of the proposed hotel, including any reimbursements to Hollander, is subject to availability of funds. It is the City's intent to apply for a HUD 108 loan to fund their portion of improvements described in this section. Hollander agrees to provide any data necessary to support the City's loan application by January 30. In turn, the City agrees to apply for a HUD 108 loan by March 1. Upon receipt of loan approval from HUD the City will forward to Hollander a written confirmation of loan approval. In the event the City has not issued this notice to Hollander by the end of May 2003, Hollander, at its option may elect to terminate this agreement. In the event Hollander elects to terminate this agreement, both parties agree that the Purchase and Sale of the Property will be unwound. The City will return the purchase price to Hollander, and Hollander will re-convey title to the Property to the City.

3.7.1 Hollander will build the concrete bridge and paving, if any, that form the hotel driveway on Commerce Street including any necessary backfill between the hotel basement wall and the City's existing retaining wall on Commerce Street. City will reimburse Hollander for that portion located in the City right-of-way per Exhibits B-1 and B-2.

3.7.2 Hollander will build and maintain the sidewalk abutting their building on Commerce Street and grant the City an easement for public access per Exhibits B-1 and B-2.

3.7.3 The City will replace existing sidewalks with necessary backfill materials, if any, on South 15<sup>th</sup> and Pacific Avenue abutting the hotel property. However, in the event Hollander wishes to replace the existing vaulted sidewalk on Commerce and South 15<sup>th</sup> with a new vaulted sidewalk, Hollander will build and dedicate the new

vaulted sidewalk to the City. Should a new vaulted sidewalk be built, Hollander will maintain or re-use historic materials, if feasible, or use alternate materials compatible with the historic character of the building. The City will reimburse Hollander in an amount equal to the cost of a surface sidewalk built on fill in that same location as determined by the City. Hollander will maintain all sidewalks adjacent to their property on Commerce, South 15<sup>th</sup> Street and Pacific Avenue in keeping with City policy for all property owners.

- 3.7.4 In the event Hollander builds a new vaulted sidewalk to replace the existing vaulted sidewalk, the City will replace the remaining surface sidewalk on South 15<sup>th</sup> and Pacific Avenue, including proposed pull-out area on Pacific Avenue, but not including Hollander's parking lot entrance on Pacific Avenue, provided configuration and access is allowable under the zoning code, is approved by the traffic engineer, and is not subject to WA State Interstate 705 right-of-way restrictions. Furthermore, if the City determines that the construction of the pull-out and restoration of pavement on Pacific Avenue is greater than the cost of constructing the continuance of a full-width sidewalk in that area, Hollander will be responsible for excess costs.
  - 3.7.5 Hollander will build storm water improvements in the hotel driveway, if any, according to the City of Tacoma's Surface Water Manual and dedicate to the City.
  - 3.7.6 City will build and maintain the landscaping strip in Commerce Street right-of-way in front of the hotel.
  - 3.7.7 City will construct traffic safety improvements on Commerce and South 15<sup>th</sup>, as necessary, to facilitate safe vehicular and pedestrian movements.
  - 3.7.8 City will synchronize traffic signals within the light rail corridor between Pacific Avenue/South 17th and Commerce/South 15th Street.
4. Section 3.8 is hereby amended by adding an additional sentence as follows:

Provision for the construction, operation and maintenance of restaurant patios anticipated to be located in the public plaza adjacent to the south end of the property will be addressed at such time as the plaza design has been determined. It is anticipated that the use of the patios by Hollander or their tenants can be accommodated by a street occupancy permit, an easement or a lease.

5. Section 3.9 is hereby amended to read as follows:

HUD Loan. Hollander has notified the City that it is not interested in pursuing a HUD loan for this development.

6. Section 11 of the agreement is hereby amended to add a new Section 11.1.4 as follows:

11.1.4 Waddell Building.

11.1.4.1 Assignment. Hollander has notified City, and the City agrees, that at closing Hollander intends to separate title to the Waddell building from title to the balance of the Property, and hold title to the Waddell in a separate entity in which Marlo and Betty Hollander hold a controlling interest.

11.1.4.2 Reimbursement. On July 23, 2002 the City notified Hollander in writing of work performed under the City's Bid Package #101 Building Demolition and Hazardous Materials Abatement (BP 101) and itemized credits in the amount of \$14,112 to be reimbursed to Hollander for use on the Waddell Building rehabilitation. The City will provide instructions to Rainier Title to reimburse Hollander in the amount of \$14,112 at closing.

7. All other terms and conditions remain in full force and effect.

ORIGINAL




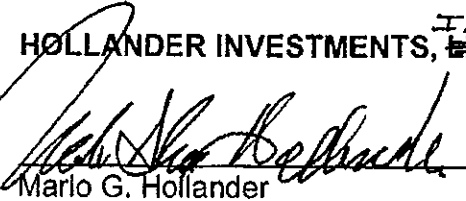
7. All other terms and conditions remain in full force and effect.


**IN WITNESS WHEREOF**, the parties hereto have executed this document as of the day and year first above written.

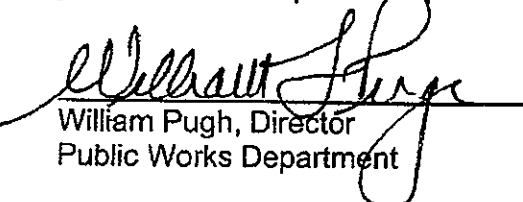
**CITY OF TACOMA**

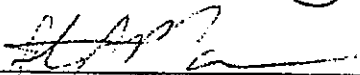
**HOLLANDER INVESTMENTS, <sup>INC</sup> ~~LLC~~**

  
Ray E. Corpuz, Jr.  
City Manager

  
Marlo G. Hollander  
It's PRESIDENT

  
Juli Wilkerson, Director  
Economic Development Dept.

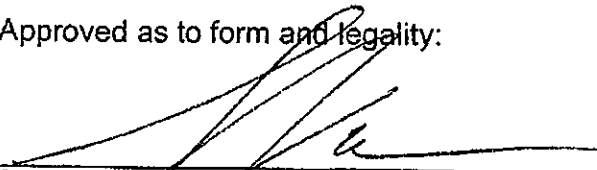
  
William Pugh, Director  
Public Works Department

  
Steven C. Marcotte, Director  
Finance Department

Attest:

 12-23-02  
Doris Sorum, City Clerk

Approved as to form and legality:

  
Steve Victor  
Assistant City Attorney

  
Andy Michels  
Risk Management

1ST AMEND. TO HOLLANDER  
DEV. AGRMT.

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Exhibit 1

HOLLANDER  
PARKING AGREEMENT

THIS PARKING AGREEMENT ("Agreement") is made as of this 19<sup>th</sup> day of December, 2002, between the CITY OF TACOMA ("City"), a Washington first-class city, and HOLLANDER INVESTMENTS, INC. ("Hollander"), a Washington corporation and or assigns (as in a LLC solely owned by Marlo and Betty Hollander).

Section 1. City Responsibilities.

It is the intent of the City to provide parking for the hotel development using facilities system-wide that are owned and managed by the City. This includes responsibility for management, utilities, taxes, maintenance, security, and lighting. The City agrees to keep open at least 250 public parking stalls within 350' of the hotel development as long as the hotel is in operation.

Section 2. First Right of Refusal.

Should the City decide at some later date to allocate or designate parking stalls at the Convention Center for private or non-convention use, or transfer, sell, or turn over designated parking stalls to a private party, Hollander will have the First Right of Refusal on such a transaction. The City will present any proposed agreement with a third party to Hollander who will have forty-five (45) days from the date of presentment to meet in full the terms of the proposed agreement. The first right of refusal will terminate at the end of the forty-five (45) day period.

Section 3. Valet Responsibilities.

The City and Hollander agree to a one-year pilot valet program with guest rates set at \$12/day with no in-and-out privileges. If at the end of the one-year period there is a desire to continue a valet program coordinated between the City and Hollander, the two parties agree to negotiate the parameters of the program including rates, responsibilities, facilities to be used, etc.

If the hotel owner is not satisfied with the performance of the valet service being provided, or cannot reach a final agreement with the City, he or she retains the right to provide his or her own valet service, and the parking manager and hotel owner will jointly select the location to be used for hotel valet parking. City agrees to provide parking stalls for use by valet service at the closest available facility.

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Section 4. Term of Parking Agreement.

This Agreement will remain in force as long as the hotel is operational.

Section 5. Land Use.

Provision for parking requirement (1/2 stall per hotel room per code requirement) will run with the land purchased from the City, and the City will not be required to provide additional parking regardless of land use.

Section 6. Interim Parking.

During Convention Center modifications and expansions, Hollander property will be provided adequate interim parking within the City's parking system (number of vehicles, convenience, close proximity) at no additional cost.

Section 7. Parking for Hotel and Mixed-Use Development.

Hollander's mixed-use development is planned to house a 160-room limited service hotel and associated meeting space as well as restaurants, retail and perhaps office uses. Parking facilities are needed to accommodate hotel guests, restaurant patrons, shoppers, and employees for various businesses within the mixed-use development.

The City will provide required parking for the hotel at City-owned facilities within the Convention Center site or close by (e.g. the South Parking Garage). Hotel parking will be available 24 hours a day, 365 days a year. Additional parking for hotel and building tenants will be accommodated in such a way that convention center operations are not compromised, and will utilize City-owned facilities within a reasonable distance from the Hollander development.

The City will construct twenty-two (22) stalls of public parking on Commerce Street between South 15<sup>th</sup> Street and South 17<sup>th</sup> Street and has acquired the existing Carlton building and its associated parking structure. Upon completion of the 22 stalls on Commerce Street, the City will manage the parking to give Hollander the priority right to park guests and customers on those twenty-two (22) surface stalls. The City agrees to manage the Carlton building parking structure to give Hollander the priority right to park guests and customers in the Carlton garage parking stalls that are entered off Commerce Street, excepting those stalls located within twenty (20) feet of the wall of the Carlton Building. Provided that, any time, the City in its sole discretion may elect to sell, transfer, demolish, or otherwise dispose of Carlton parking garage, or displace the surface stalls on Commerce. In the event that the City disposes of the Carlton parking garage, or expands the convention center complex in a manner that will displace the surface stalls on Commerce Street and eliminates or replaces the Carlton garage parking structure with a different use, and that expansion does not include at least twenty-two (22) priority use parking stalls for Hollander guests and customers, the City

ORIGINAL

will provide Hollander with a 50% discount from the then current rates under this Agreement on fifty (50) permits for parking within 350' of the Hotel.

The City is considering the use of a card-key access program to provide hotel guests with access to parking facilities and to generate monthly parking invoices to be provided to Hollander.

Section 8. Hotel Parking Rates.

The City will provide permits for ½ stall per hotel room as required by the zoning code, and will accommodate additional parking as available. The initial parking rates for the proposed 160-room hotel are based on the City's current monthly rate of \$105 per month, includes in-and-out privileges at no additional cost and will be set as follows:

Permits #1-#80      Self-Park Rates

- A. Convention and Non-Convention Days  
\$3.50/day subject to a maximum 5% increase per year
- B. Overflow\* Convention Days  
\$3.50/day subject to a maximum 5% increase per year

Permits #81+      Self-Park Rates

- A. Convention and Non-Convention Days  
\$3.50/day subject to a maximum 5% increase per year
- B. Overflow\* Convention Days  
\$8/day subject to a maximum 5% increase per year

\*Overflow Convention Day is defined as when the demand for parking associated with convention center events exceeds the supply of parking at the Convention Center, resulting in spillover demand.

The City reserves the right to increase rates each year based on market survey data collected in downtown Tacoma. Rate increases will be limited to a maximum of 5% per year. Hollander reserves the right to challenge any rate increase and may request a rate reduction based on market survey data. In any case, the City's parking rates will be structured in such a manner that Hollander's mixed-use development will not be penalized by paying above market rates.

Section 9. Reservation Process

The City and Hollander agree to work together to accommodate additional parking as needed. Hollander may reserve parking in City-owned parking facilities up to one year in advance with initial confirmation at least 60 days prior to the event and final confirmation no less than fourteen (14) days before an event. The City may assess a penalty if the reservation is canceled less than fourteen (14) days prior to the date reserved.

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Hollander agrees to provide the City's designated parking representative with a schedule of events on a monthly basis to facilitate efficient management of the parking facilities.

Section 10. Commerce Street – On-Street Parking.

- (a) Owned and maintained by the City of Tacoma
- (b) Free short-term load and unload parking areas will be signed

ORIGINAL



200212300778 9 PGS  
12-30-2002 11:10am \$27.00  
PIERCE COUNTY, WASHINGTON

Return Address

Name

Address

City, State, Zip

Krinner Title Company  
1101 Broadway  
Tacoma Wa. 98402

Document Title(s) (or transactions contained therein):

1. Declaration of Covenants, Conditions, Restrictions and
2. Easements
- 3.
- 4.

1010079702

Reference Number(s) of Documents assigned or released:  
(on page \_\_\_\_\_ of documentation(s))

Grantor(s) (Last name first, then first name and initials)

1. City of Tacoma
- 2.
- 3.
- 4.
5. Additional names on page \_\_\_\_\_ of document.

Grantee(s) (Last name first, then first name and initials)

1. Future Owners
- 2.
- 3.
- 4.
5. Additional names on page \_\_\_\_\_ of document.

EXCISE TAX EXEMPT DATE 12-30-2002  
Pierce County

By E. Orley Auth. Sig

Legal Description (abbreviated: i.e. lot, block, plat or section, township, range)

L 1-12, inc., B 1504, New Tacoma

Additional legal is on page 7 of document

Assessor's Property Tax Parcel/Account Number

201504 0010; 0020; 0030; 0040; 0050; 0060; 0070; 0080; 0090 + 0100

Additional Tax Parcel/Account Numbers on page \_\_\_\_\_ of document

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

Washington State County Auditor/Recorder's  
Indexing Form (Cover Sheet)

For reference only, not for re-sale.

27

Exhibit 6

Filed for Record at Request of;  
After Recording Mail to:

Reference # (if applicable):

Grantor:

Beneficiary:

Legal Description (abbreviated):

Add. legal is on page:

Assessor's Property Tax Parcel #:

L 1-12, inc, B 1504, New Tacoma  
201504 0010, 0020, 0030, 0040, 0050, 0060, 0070;  
0080, 0090, + 0100

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

The City of Tacoma, Washington, a first-class city, acting pursuant to its charter and the laws of the state of Washington, in its proprietary capacity only as the owner of the property herein described (hereinafter referred to as the "Declarant") does by this Declaration of Covenants, Conditions, Restrictions and Easements ("Declaration") impose as covenants, conditions, restrictions, and easements running with the land the restrictions and obligations upon the Declarant, the owners and future owners of any portion of the property herein described (collectively, with Declarant, "Owners") as follows:

1. Property Subject to Declaration. The Property that shall be subject to the provisions of this Declaration is the property legally described on Exhibit "1" attached hereto ("Property")
2. Easements Granted by Declaration. The right to use the Property as provided herein shall be subject to the following easements which run with the land and binds the parties, their successors, and assigns, benefiting and burdening the Parcels as described herein.

2.1 Driveway Construction Easement. The City hereby grants to Hollander an easement to construct a driveway and porte-cochere in City right of way as more specifically described in Exhibit B-1. Upon completion of construction, the easement shall terminate and the driveway shall become property of the City. The porte-cochere shall remain property of Hollander and the City will grant a Street Occupancy Permit for the portion of the porte-cochere located on City property. In the event a Street Occupancy Permit is not available for that purpose, the City agrees to grant an easement for the porte-cochere for so long as Hollander, or a successor, operates a hotel on the property. The foregoing shall not in any way create any

ORIGINAL

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obligation on the part of the City to maintain, repair or replace any improvements of any kind not owned by the City.

**2.2 Walkway Easements.**

2.2.1 Hollander hereby agrees to construct, maintain, and provide public access in perpetuity, a sidewalk abutting their building on Commerce Street as more specifically described in Exhibit B-1. The foregoing shall not in any way create any obligation on the part of the City to maintain, repair, or replace any improvements of any kind on the Property not owned by the City.

2.2.2 In the event the existing vaulted sidewalk on Commerce and South 15<sup>th</sup> is replaced with a new vaulted sidewalk, Hollander will build and dedicate to the City.

2.2.3 In the event Hollander is required to construct stairs and/or an ADA ramp for access to the Waddell Building on Commerce Street, the City will, if necessary, accommodate the structure with an easement.

2.3 Air Easement. Subject to review of Hollander's building plans, the City will issue an aerial easement to accommodate any overhang from the building that would effect the sidewalk in the public right-of-way.

2.4 Subterranean Easement. The City shall grant an easement to Hollander for use of existing space beneath Commerce Street created by the vaulted sidewalk now in place and anticipated to be preserved by Hollander's construction of the hotel driveway. Furthermore, in the event the existing vaulted sidewalk on Commerce and South 15<sup>th</sup> is replaced with a new vaulted sidewalk, the City will issue an easement allowing Hollander to utilize the space beneath both Commerce Street and South 15<sup>th</sup> Street for the duration of their ownership, and/or assigns, at no cost other than Hollander's improvements to the Waddell Building. Hollander, and/or assigns, agrees to assume all liability and indemnify, defend and hold harmless, the City, from any claim or damage arising out of Hollander's use of this space.

2.5 Hotel Affiliation: Prior to commencement of construction, the proposed Hotel Affiliation shall be submitted in writing by Hollander for approval by the City Manager or his or her designee. The City will review the level of quality and service of the proposed Hotel Affiliation, and in its sole discretion, approve or disapprove of the proposed affiliation in writing within thirty (30) days of submission. In the event that the City fails to approve or disapprove the Hotel Affiliation within thirty (30) days, the City will be conclusively deemed to have approved the affiliation. Furthermore, the City's

**Hollander Declaration of Covenants,  
Conditions, Restriction & Easements**

-2-

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right to approve any proposed change in Hotel Affiliation will run with the land and is a permanent right of the City.

2.6 Use Restrictions. No portion of the Property shall be used or operated in any of the following manners:

- (a) In a dangerous or hazardous manner.
- (b) As an illegal or nonconforming use, as a nuisance, or as an obnoxious use by reason of unsightliness or excess emission of odors, dust, fumes, smoke, liquid waste, noise, glare, vibration, or radiation; provided that nothing contained in this subsection shall limit or prohibit any Owner's erection of business communications, antennas, or satellite dishes on the roof of any building on any Parcel. No activity that constitutes a nuisance under local or state law shall be permitted. A nuisance shall include, in addition to any activity and considered a nuisance by law, any violation of this Declaration.
- (c) As an adult book store, night club or discotheque, massage parlor or any other establishment that provides live, adult entertainment or which sells, rents, or exhibits pornographic or obscene materials.
- (d) For any fire sale, bankruptcy sale (unless pursuant to court order), or auction house operation.
- (e) As a warehouse or for any industrial or manufacturing use of any kind or nature, excluding research and development facilities which are accessory to office uses.
- (f) As a secondhand store, flea market, pawn shop, government surplus store, Goodwill store, salvage store, Salvation Army store, or liquidation store.
- (g) As an automobile, truck, trailer, or other vehicle sales, leasing, repair facility, excluding an automobile rental office maintained in connection with a hotel or other lodging facility.

3. Maintenance and Upkeep. Hollander shall maintain, repair, replace, and improve all buildings, structures, paved areas, and landscaping on the Property as appropriate for a first-class development. With regard to each building, Hollander shall be responsible to maintain and replace the exterior painting and clean, maintain, repair, and replace, as needed, the windows and roofing. No garbage, rubble, or cuttings shall be deposited on or left on any of the Parcels in any location other than in containers or areas designated for such purpose.

For reference only, not for re-sale.

4. Improvements. No building, structure, or improvement of any kind will be constructed, installed, or maintained on the Property except in compliance with all local zoning, building, fire safety, and other laws and regulations and with the provisions of this Declaration.

All construction of improvements, once commenced, shall be prosecuted diligently, subject only to delays beyond the control of Hollander and its contractor(s).

5. Enforcement. The conditions, covenants, restrictions, and easements described in this Declaration may be enforced by the City or Hollander. No delay or omission on the part of any person in exercising any rights, powers, or remedies provided in this Declaration shall be construed as a waiver of the right to enforce this Declaration on subsequent occasions.

6. Binding Arbitration of Disputes. Except as provided below, any controversy or claim arising out of or relating to this Declaration or the breach thereof shall be settled by arbitration before one arbitrator in Tacoma, Washington, pursuant to the provisions of RCW Ch. 7.04. A party seeking to enforce this Declaration may bring directly in the Superior Court for the state of Washington, in and for Pierce County, a lawsuit without seeking arbitration if the primary relief sought is a temporary restraining order or preliminary injunction upon the court's determination of whether a restraining order or injunction should be granted. The matter shall then be referred to arbitration for determination of the merits of the dispute.

7. Attorney's Fees, Litigation Expenses, and Costs. If legal action or an arbitration is commenced to enforce or determine any rights of the parties under this Declaration, the prevailing party or parties in such action shall be entitled to an award of his, her, or their attorney's fees, litigation expenses, and costs incurred in the action or arbitration, including attorney's fees, litigation expenses, and costs of collection.

8. Applicable Law. This Declaration shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the state of Washington.

9. Severability. If any provision of this Declaration is determined by a court to be invalid or unenforceable, the remainder of this Declaration shall remain in full force and effect.

10. Successors. This Declaration binds the heirs, successors, and assigns of the parties and the Owners of any portions of the Property.

11. Amendments. Amendments of this Declaration shall be made only upon the written agreement of the Owners.

ORIGINAL

IN WITNESS WHEREOF the Declarant has executed this Declaration this 23<sup>rd</sup>  
day of December, 2002.

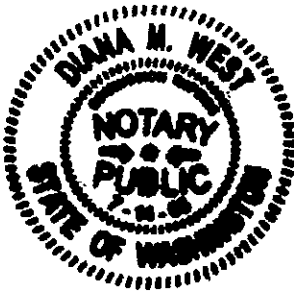
CITY OF TACOMA

By: William H. Baarsma  
WILLIAM H. BAARSMA, Mayor

STATE OF WASHINGTON )  
County of Pierce ) ss.

I certify that I know or have satisfactory evidence that WILLIAM H. BAARSMA is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument, and acknowledged it as the Mayor of the City of Tacoma to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 23, 2002.



Diana M. West  
NOTARY PUBLIC  
Print Name: Diana M. West  
Residing in Pierce County  
My appointment expires: 7-14-06

For reference only, not for re-sale.

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EXHIBIT A

PARCEL A:

LOTS 1 TO 10, INCLUSIVE, IN BLOCK 1504 OF MAP OF NEW TACOMA, AS PER PLAT FILED FOR RECORD ON FEBRUARY 3, 1875, RECORDS OF PIERCE COUNTY AUDITOR;

PARCEL B:

ALL THAT PART OF LOTS 11 AND 12, BLOCK 1504, MAP OF NEW TACOMA, WASHINGTON TERRITORY, LYING NORTH OF A LINE 310 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID BLOCK 1504;

ALL THAT PART OF LOTS 11 AND 12, BLOCK 1504 MAP OF NEW TACOMA, WASHINGTON TERRITORY, LYING SOUTH OF A LINE 310 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID BLOCK 1504;

TOGETHER WITH THAT PORTION OF VACATED JEFFERSON AVENUE ADJOINING SAID PROPERTY AS VACATED BY ORDINANCE NO. 27008 AND RECORDED DECEMBER 13, 2002 UNDER PIERCE COUNTY RECORDING NO. 200212130377;

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

For reference only, not for re-sale.

Document

PERMIT NO. SOP 140

APN: 201504-0010  
Proj No. 02-170

**STREET OCCUPANCY PERMIT**  
Waddell Building – Foundation Footprint

**ORIGINAL**

THIS PERMIT, made and entered into this 19 day of Dec., 2002, by and between the **CITY OF TACOMA**, hereinafter called the "City", and **MARLO AND BETTY HOLLANDER**, hereinafter called the "Permittee."

**WITNESSETH:**

**WHEREAS** the City, under Chapter 9.08, Tacoma Municipal Code, may grant the use of street right of way to owners and occupants of abutting real property, and

**WHEREAS** the Permittee owns or occupies the real property at 1502-04 Pacific Avenue, Tacoma, Washington, and

**WHEREAS** the Permittee desires to occupy a portion of the right of way, one (1) foot from the property line fronting the Waddell building on the West, North, and East sides abutting Commerce Street (west), South 15th Street (north), and Pacific Avenue (east), such right of way portion being displayed in Exhibit "A", attached hereto and made a part hereof;

**NOW THEREFORE**, in consideration of the covenants and agreements of the parties hereto hereinafter set forth, the City does hereby grant unto the Permittee a Street Occupancy Permit on that portion of said right of way, above described, subject to and upon the following terms, covenants and conditions, to wit:

1. **USE, MAINTENANCE AND OPERATION OF THE PERMIT AREA.** The permit area is to be used for an existing foundation footprint that encroaches into the right of way of Commerce Street, South 15th Street, and Pacific Avenue, as depicted in Exhibit "A." The site and structure authorized under this permit shall be maintained in an orderly, safe and sanitary condition at all times and the structure shall comply with and be permitted under the City's building code.
2. **CONDITIONS OF USE.**
  - a. **Additions to existing structure or other Improvements.** The existing foundation footprint may not be enlarged nor may any other outbuilding be placed in the right of way under this permit.
  - b. **Costs Incurred by the City.** Permittee agrees to indemnify and hold the City harmless from any costs whatsoever incurred by it for any reason related to the placement of the foundation, including, but not limited to, additional costs for excavation for utilities in the right of way.

c. **Vacation of Right of Way.** Permittee agrees, as a condition of this permit, to petition for vacation, one (1) foot from the property line fronting the Waddell building on the West, North, and East sides abutting Commerce Street (west), South 15th Street (north), and Pacific Avenue (east) right of way at the earliest practical time, but no later than one year from the issue date of this permit. 124.1218 12/31/03

3. **TERM.** Subject to paragraph 8 of this permit, the term of this permit shall be for one (1) year and shall be renewed only for the time needed to accomplish the vacation of the right of way. Said term shall commence upon the above date.
4. **INDEMNIFICATION.** The City and its officers, agents and employees shall not be liable to the Permittee or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in or about the permit area or any part thereof. The Permittee shall indemnify and hold the City and its officers, agents and employees harmless from and against any and all claims, liens and judgments for death of or injury to any person or damages to property whatsoever occurring, on or about the permit area or any part thereof.
5. **LIABILITY INSURANCE.** The Permittee shall maintain liability insurance policies that shall name the City as an additional insured and, as a minimum, provide coverage in substance and in amount as specified in Title 9.08 of the Official Code of the City of Tacoma (or any amendments thereto) pertaining to street occupancies. Coverages shall include, but not be limited to, Operations Liability, Products/Completed Operations Liability, Owner's and Contractor's Protective Liability, and Blanket Contractual Liability. The insurance policy shall: (1) name the City of Tacoma as an additional insured; (2) apply as primary insurance, regardless of any insurance the city may carry; (3) include a "cross-liability" (severability of interest) clause; and (4) include limits of protection of not less than \$500,000 combined single limit, bodily injury and property damage. For a residential use, coverage shall be that found in the typical homeowner's policy. It is to be understood and agreed that the obligation of permittee to hold harmless the city from claims for damages arising out of the use or operations related to the permit shall not be limited to the amount of insurance provided by the permittee. The insurance policy shall further contain a clause obligating the issuing company to give notice to the Risk Manager of the City of Tacoma 30 days before the cancellation of the policy.
6. **SUBLEASE OR ASSIGNMENT.** This permit may not be assigned by the Permittee or any part thereof sublet by the Permittee without the prior written consent of the City.
7. **NONWAIVER OF DEFAULTS.** The Waiver by the City of any breach by Permittee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same nor may any condition of this agreement be waived, except by the written consent of the City, and forbearance or indulgence by the City in covenant or condition to be performed by the Permittee to which the same may apply, and until complete performance by the Permittee of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this permit or by law, despite said forbearance or indulgence.

8. **RIGHT TO TERMINATE.** This permit is wholly of a temporary nature and vests no permanent right whatsoever. Notwithstanding any other provision herein to the contrary, the City reserves and shall have the right to terminate this permit at any time upon thirty (30) days' written notice to the Permittee, if the City determines that such termination is necessary to allow for such public or municipal uses of the permit area as may be in the best interests of the City of Tacoma or the general public. This permit may be terminated without such notice if the permitted use becomes dangerous, or any structures related to the use become insecure or unsafe, or if such structures are not constructed, maintained or used in accordance with this permit or Chapter 9.08 of the Municipal Code of Tacoma.

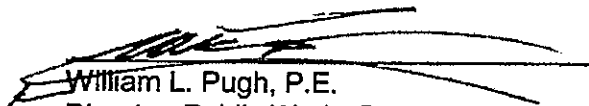
**IN WITNESS WHEREOF** the parties hereto have executed this document as of the day and year first written above.

ACCEPTED subject to said  
Terms and Conditions:

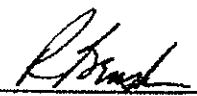
**CITY OF TACOMA**

**PERMITEE**

By:

  
William L. Pugh, P.E.  
Director, Public Works Department

\_\_\_\_\_  
Marlo and Betty Hollander

  
\_\_\_\_\_  
General Services, Asset Management

Approved as to form:

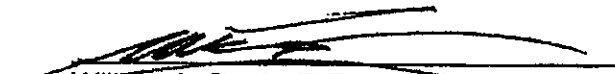
  
\_\_\_\_\_  
Assistant City Attorney


8. **RIGHT TO TERMINATE.** This permit is wholly of a temporary nature and vests no permanent right whatsoever. Notwithstanding any other provision herein to the contrary, the City reserves and shall have the right to terminate this permit at any time upon thirty (30) days' written notice to the Permittee, if the City determines that such termination is necessary to allow for such public or municipal uses of the permit area as may be in the best interests of the City of Tacoma or the general public. This permit may be terminated without such notice if the permitted use becomes dangerous, or any structures related to the use become insecure or unsafe, or if such structures are not constructed, maintained or used in accordance with this permit or Chapter 9.08 of the Municipal Code of Tacoma.

**IN WITNESS WHEREOF** the parties hereto have executed this document as of the day and year first written above.

ACCEPTED subject to said  
Terms and Conditions:



**CITY OF TACOMA**

  
\_\_\_\_\_  
William L. Pugh, P.E.  
Director, Public Works Department

  
\_\_\_\_\_  
General Services, Asset Management

**PERMITEE**

By:

  
\_\_\_\_\_  
Marlo and Betty Hollander  
  
Approved as to form:

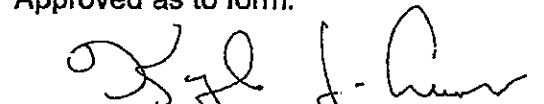
  
\_\_\_\_\_  
Assistant City Attorney



EXHIBIT A

