

After Recording Return To:  
City of Tacoma  
Community and Economic Development Department  
747 Market Street, 9th Floor  
Tacoma, WA 98402  
Attn: Director

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF TACOMA,  
AND YARETON INVESTMENT & MANAGEMENT (WASHINGTON) L.L.C.**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “Amended Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF TACOMA** (“City”), a Washington First-Class Charter City, acting in its proprietary capacity, and **YARETON INVESTMENT & MANAGEMENT (WASHINGTON) L.L.C.**, a Washington limited liability company (“Yareton”) (collectively the “Parties”).

RECITALS

A. At one hundred twenty million dollars in total project cost, the Greater Tacoma Convention Center (“GTCC”), is one of the largest most important public investments in economic development in Tacoma’s history.

B. Because of the lack of adjacent Hotel room block reservations for convention attendees, the GTCC has been unable to utilize its full capability.

C. Since the initial development of the Greater Tacoma Convention Center (“GTCC”), the City has planned for the adjacent City-owned property to the South (the “Subject Property”) to be developed with a hotel/mixed-use development that would complement the GTCC, and enter into a Room Block Agreement to allow full convention operations.

D. In 2014 the City selected Yareton, through a public competitive process, as its preferred Yareton for a hotel/mixed-use development, including a Room

Block Agreement, on the Subject Property, and in November 2014, entered into a Development Agreement Between the City of Tacoma and Yareton Investment Management (Washington) LLC (the "Development Agreement").

E. Following the effective date of the Development Agreement, at Yareton's request, the City extended time for performance, forgoing other potential opportunities to develop the Subject Property, the enhancement to GTCC operations from an implemented Room Block Agreement, as well as the tax revenues that would have been derived from a development that was completed according to the original schedule.

G. The parties have developed a number of material amendments to the original Development Agreement to account for changed or completed terms, since November 2014, as well as well additional requests from Yareton, and final time frames for commencement and completion of development.

H. The Parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Project.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the various undertakings and promises contained herein and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

Section 1. Incorporation of Recitals. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.

Section 2. Definitions. In addition to the terms defined in the Recitals above (which Recitals are incorporated in the body of this Agreement as an integral part hereof), the following terms shall have the meanings set forth below:

"Certificate of Completion" means a certificate issued by City to Yareton pursuant to Section 5 of this Agreement.

"City Representative" means the City Manager of the City of Tacoma or designee. Upon approval of this Agreement by the City Council, the City Representative for this Agreement shall be the City Manager and every reference to the City herein including but not limited to decisions of the City or actions to be taken at the discretion of the City shall mean a decision of the City Manager or designee, or at the discretion of the City Manager or designee.

“Closing” for the purposes of any conveyance contemplated/required under this Agreement, is defined as the date that all documents are executed, the sale proceeds are available for disbursement to the seller, and legal title passes to the buyer.

“Construction Commencement Date”, “Commence Construction” or “Commencement of Construction” means the date Yareton executes and delivers to Yareton’s general contractor an authorization to proceed with vertical construction work involving the foundation or the structure of the buildings to be constructed as part of the Project, which shall be not later than the date identified in Exhibit C. Site preparation, grading, excavation and mobilization do not constitute “Construction Commencement Date”, “Commence Construction” or “Commencement of Construction”.

“Construction Schedule” means the schedule for construction of the Improvements that comprise the Project as approved herein, and attached to Exhibit C.

“Council” means the Tacoma City Council.

“Declaration” and “CC&Rs” mean the Declaration of Covenants, Easements and Restrictions to be recorded against the Subject Property in the Official Records of Pierce County, Washington and to be attached hereto as Exhibit D. At a minimum the “Declaration” and “CC&Rs” shall address, but not be limited to access and use easements, a 4 star hotel operating covenant, use and maintenance of the “canyon” space between the Yareton Project and the GTCC, and new parking use, operation and maintenance.

“Design Guidelines” means, collectively, the Development Plan, the City of Tacoma Municipal Code, the City of Tacoma Land Use Regulatory Code, the City of Tacoma Comprehensive Plan, the Design Guidelines for the Union Depot/Warehouse District and other Legal Requirements or applicable laws that affect either the Project or the Subject Property.

“Development Plan” means Yareton’s plan for development of the Subject Property consisting of the Hotel/Mixed Use Development as defined in Exhibit C.

“Effective Date” means the date of the mutual execution of this Agreement, including attached Exhibits. It is acknowledged that some of the Exhibits will be produced at a later date. Any placeholders attached hereto instead of full exhibits will indicate which party or parties is responsible for the production and inclusion of exhibits not yet extant at the time of execution.

“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 (to the extent that compliance with future laws or amendments is legally required) including, but not limited, to 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 Toxic Substances Control Act at 15 U.S.C. § 2601, et seq., the Hazardous Waste Management Act, Ch. 70.105 RCW, the Clean Air Act, and 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 (to the extent that compliance with future laws or amendments is legally required) 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 8 herein.

“Exchange of Value” means the guiding concept, agreed to by the Parties, that when either party requests an alteration to a previously agreed upon obligation under this Agreement, whether in the form of a reduction, increase, deletion, addition, or etc., there should be some reciprocal consideration that accrues to the non-requesting party. The Parties agree that this principle should govern adjustments, amendments and modifications to this Agreement at all phases until completion.

“Fair Market Value” shall mean the value of the Subject Property as determined by qualified MAI appraisal, and as further defined in Section 2, herein.

“Financing Obligations” means the financial obligations of any party relevant to the financing of the Project.

“Financing Plan” means Yareton’s City approved plan for financing the Project to completion. The Financing Plan must be approved by the City prior to conveyance of any portion of the Subject Property. Yareton acknowledges that the City may have its independent financial consultant(s) review the Financing Plan for, among other things, viability. The City acknowledges that Yareton intends to finance the Project through a combination of its own capital investment, EB-5 investor funding, and traditional loans.

“Force Majeure” shall have the meaning given in Section 11.20 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 Subject Property, having, asserting, or acquiring jurisdiction over or providing utility service to the Project, and/or the management, operation, use, or improvement thereof.

“Hotel/Mixed Use Development” means the combination of hotel, longer term residential, retail and potential commercial office uses as well as parking to be developed on the Subject Property in accordance with this Agreement and the Development Plan.

“Improvements” means all buildings, structures, improvements, both on and off-site, and fixtures now or hereafter placed or constructed in, under, or upon the Subject Property, together with all additions to or replacements thereof made from time to time, and all access ways, pedestrian areas, fences, paved areas, utility distribution facilities, lighting, signage, loading docks and other infrastructure improvements to be built by any party on the Subject 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 Subject Property, the Project or any part thereof including, without limitation, ownership, operation or possession, and/or all matters relating to parking regulations, building codes, zoning, or other land use matters, life safety requirements and Environmental Standards.

“Project” inclusively means the development of Phase One of the Subject Property in accordance with the approved Development Plan, including construction of all Phase One Improvements, and all related obligations of the Parties with respect to those Phase One Improvements.

“Project Documents” means this Agreement, the Declaration, and the approved Development Plan and Construction Schedule.

“Room Block Agreement” means the Room Block Agreement, attached hereto and incorporated herein by references as Exhibit B, and the execution of which by Yareton constitutes material consideration for the City’s entry into this Amended Agreement.

“Subject Property” means the southern portion of tax parcel 2015060011, together with tax parcels 2015050110, 2015050120, and 2015050130, an area containing approximately 76,700 square feet, and a portion of Broadway to be vacated by the City, containing approximately 7,142 square feet (collectively, the “Subject Property”), all as legally described and depicted on Exhibit A.

“Substantial Completion” or “substantially complete” means the date on which all of the following have occurred: (i) the Phase One Improvements required to be developed by this Agreement are complete according to the approved Development Plan, 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/Property Acquisition/General Standards.

2.1 Intent/Subject Property Conveyance. Pursuant to this Agreement and subject to the satisfaction of the conditions precedent stated herein, the City agrees to sell and Yareton agrees to purchase the Subject Property on or before July 31, 2017 (“Closing”) for a Fair Market Value price of Six Million Four Hundred Seventy Thousand Four Hundred Seventy Five U.S. Dollars (\$6,470,475.00, the “Purchase Price”). The Purchase Price is based on that certain appraisal conducted by Kidder Matthews, dated August 26, 2013 (the “Appraisal”), which valued the Subject Property at \$75.00 per square foot. The Parties have agreed to resolve the assumptions referenced in Section 2.1 of the original Development Agreement as follows:

(a) No reappraisal will be conducted. The Purchase Price set forth above is final and payable to the City in readily available funds at Closing without deduction or offset.

(b) Yareton shall be responsible for paying all costs of the environmental assessment and remediation of the Subject Property, together with any cost of dewatering and costs related to or arising from any soil conditions on the Subject Property, except for the City’s cost-share as described below. Soil samples were collected for chemical analysis from geotechnical borings advanced at the hotel site. Low concentrations (0.00071 to 0.0027 mg/kg) of tetrachloroethene (PCE) were detected in two soil samples (Environmental Summary Report, GeoEngineers, January 12, 2017). According to the Tacoma-Pierce County Health Department (TPCHD) and the State Department of Ecology (Ecology), soils with detected PCE will require disposal at a Subtitle D landfill. TPCHD will require that the contaminated soil be delineated before a Waste Disposal Authorization (WDA) will be issued for soil disposal. The City shall be responsible for soil disposal fees associated with the Tacoma Convention Center hotel project of up to \$500,000 at a Subtitle D landfill calculated as follows and provided that all of the conditions below are met:

(1) Soil shall be delineated on site to determine whether or not it is contaminated. Yareton shall provide the City with a Soil Management Plan that provides sufficient information, such as analytical reports and/or investigation reports, that will be required by TPCHD for WDA issuance and a copy of the WDA.

(2) Yareton shall provide the City with copies of the invoices for the soil disposal fees incurred at a Subtitle D landfill and a copy of an invoice for soil disposal fees at an inert landfill.

(3) The City shall pay the difference in the soil disposal fees per cubic yard between what Yareton would have had to pay to dispose of excavated clean soils at an inert landfill and the soil disposal fees to dispose of contaminated soils at a Subtitle D landfill.

(4) Yareton shall be reimbursed within 30 days of submitting the Subtitle D invoices to the City for payment less soil disposal fees at an inert landfill.

(c) The Parties understand that, as the Project is constructed, easements will be needed by both Parties and are contemplated to be included in the CC&Rs. The Parties have agreed that the reciprocal need for easements and the value of such easements will likely balance such that the Parties have agreed, at this time, to work cooperatively to grant each other such easements without the payment of monetary consideration or to account for such easements as part of the Purchase Price for the Subject Property.

(d) Prior to the conveyance of the Subject Property, Yareton will (a) conduct due diligence sufficient to satisfy itself and its investors that it can develop the Subject Property in accordance with the approved Development Plan, (b) satisfy the City with its Financing Plan regarding Yareton's ability to construct the Project through Substantial Completion in accordance with the Development Plan and Construction Schedule, and (c) obtain all necessary City permits including approval of building plans. The City agrees to provide Yareton with copies of any documents, reports or other materials in its possession that could assist Yareton in performing its due diligence on the Subject Property.

## 2.2 Title to the Subject Property.

2.2.1 Condition of Title. The City represents that title to the Subject Property shall be free of monetary encumbrances or defects at Closing except for the lien for ad valorem real property taxes with respect to the fiscal year

of Closing not yet due and payable, which shall be prorated as of the Closing Date. The City shall satisfy or cause to be satisfied prior to Closing or at Closing from the Purchase Price all monetary encumbrances or defects. For the purposes of this paragraph, the phrase "monetary encumbrances or defects" as used herein means encumbrances or defects to title, other than ad valorem real property taxes, which by their terms require the payment of money, whether in installments or at a fixed time or otherwise, including, but not limited to, mortgages, deeds of trust, mechanic's or materialmen's liens, liens associated with public improvement districts and special assessments. The phrase "non-monetary exceptions" shall be defined as all defects, reservations, conditions, covenants, easements and other exceptions to title other than "monetary exceptions or encumbrances."

2.2.2 Title Commitment. Within ten (10) days of the Effective Date of this Agreement, the City shall deliver or cause to be delivered to Yareton a current title commitment (the "Title Commitment") for an owner's extended coverage title policy ("Title Policy"), issued by Fidelity Title Insurance Company (the "Title Company") in the amount of the Purchase Price, showing the status of the title of the Subject Property. The City shall also concurrently deliver to Yareton legible copies of all exceptions disclosed in the Title Commitment.

2.2.3 Survey. Within thirty (30) days of the Effective Date of this Agreement, the City shall deliver or cause to be delivered to Yareton a current survey of the Subject Property (herein, "Survey"), which Survey shall contain the legal description of the Land, a certification of the square footage thereof, shall show the boundaries of the Land and any encroachments thereto, and shall show each exception listed in the Title Commitment.

2.2.4 Review of Title Commitment and Survey. Yareton shall have thirty (30) days following the receipt of the Title Commitment, the exceptions thereto, and the Survey to review and comment on the non-monetary exceptions and other matters contained therein. Yareton shall be entitled, in its sole and absolute discretion, to terminate this Agreement, or to object to any of the exceptions to title or matters disclosed by the Title Commitment or the Survey, and/or to condition its acquisition of the Subject Property upon the release, discharge or removal of said non-monetary exceptions prior to Closing, and the deletion of such non-monetary exception or exceptions from the Title Policy to be issued at Closing.

2.2.5 The City's Right to Cure Objections to Title. If Yareton raises any objections to the title of the Subject Property in accordance with the provisions of this paragraph, then the City shall remove said objection matters before Closing unless the City, within ten (10) days after the receipt of Yareton's



objections gives Yareton notice that the City elects not to cause such exceptions to be removed. If the City gives Yareton such notice, then Yareton may either waive its original objections, in which event this Agreement shall continue in full force and effect, or terminate this Agreement by notice delivered to the City on or before the Closing Date (failing which Yareton shall be deemed to have waived such objections). Notwithstanding anything herein to the contrary, the City shall remove all monetary defects or encumbrances. All non-monetary exceptions approved or deemed approved by Yareton shall be defined as "Permitted Exceptions" hereunder.

2.3 Delivery of Information. Within ten (10) days of the Effective Date of this Agreement, the City shall deliver or cause to be delivered to Yareton the following items which the City has in its possession, or to which the City has reasonable access:

2.3.1 Environmental Documentation. Copies of any environmental and hazardous waste studies, reports, and tests, and all correspondence in respect thereto, including any correspondence with governmental agencies or third parties; copies of any no action letters, administrative orders or consent decrees;

2.3.2 Reports and Studies. Copies of any engineering studies, feasibility reports, wetland studies, traffic reports, soil-bearing test data, and any similar reports and studies with respect to the Subject Property;

2.3.3. Plans and Specifications. Copies of any plans and specifications, as-built plans, engineering drawings, relating to the improvements on the Subject Property.

2.3.4 Contracts. Copies of any contracts or agreements in connection with the Subject Property.

2.3.5 Proceedings. Copies of any lawsuits, administrative, arbitative or other proceedings or other governmental investigations pending or, to the City's best knowledge, threatened against or affecting, the Subject Property

2.4 As Is; Where Is. Except as otherwise provided in this Agreement or in the Deed delivered to Yareton, Yareton acknowledges that the Subject Property will be conveyed in an "AS IS" "WHERE IS" condition and that Yareton will be responsible for all site preparation work, including demolition and installation of infrastructure needed to serve the Project. Notwithstanding the foregoing, the City represents, warrants and covenants to Yareton:

2.4.1 Power and Authority. The City has the authority and power to enter into this Agreement and to consummate the transaction provided for herein. This Agreement and all other documents executed and delivered by the City constitute legal, valid, binding and enforceable obligations of the City.

2.4.2 No Violations. The execution, delivery and performance by the City of its obligations under this Agreement will not conflict with or result in a breach of any law, governmental rule, regulations, judgment, decree or order by which the City or the Subject Property is bound, or by any of the provisions of any contract to which the City is a party or by which the City or the Subject Property is bound. The City has not received any notice of the existence of any violation of any applicable covenant, condition or restriction or any applicable statute, ordinance, regulation, order, permit, rule or law, including, without limitation, any building, zoning or environmental restriction or requirement concerning filling, use, construction, maintenance, repair, replacement, operation or occupancy of the Subject Property.

2.4.3 No Default or Breach. There is no default or breach by the City under any covenants, conditions, restrictions, rights-of-way, or easements which may affect the Subject Property or any portion thereof.

2.4.4 No Leases or Contracts. There are no leases or other agreements or contracts affecting all or any part of the Subject Property that will survive the Closing.

2.4.5 No Proceedings. There are no claims, actions, suits or governmental investigations or proceedings existing or pending or, to the best of the City's knowledge, threatened against or involving the Subject Property (including, without limitation any condemnation or eminent domain proceeding or matter related to the formation of or assessment by a local improvement district).

2.4.6 Hazardous Materials. To the best of The City's knowledge, the City is in full compliance with all Environmental Standards applicable to the Subject Property.

## 2.5 Closing.

2.5.1 Time and Place. Provided that all the conditions set forth in this Agreement have been previously fulfilled or waived, the Closing shall take place at the offices of the Title Company.

2.5.2 Documents to be Delivered to Yareton. The City shall obtain and deliver to Yareton at Closing the following documents (all of which shall be duly executed and acknowledged where required and shall survive the Closing):

(a) Deed. A fully executed Quit Claim ("Deed") in recordable form and in such form that will convey to Yareton all City right, title and interest (subject to retained easements as mutually agreed upon) in and to the Subject Property, free and clear of all liens, encumbrances, conditions, easements, assignments, and restrictions, except where otherwise mutually agreed upon and except for general real estate taxes not yet due and payable and the Permitted Exceptions.

(b) Title Policy. A Title Policy in the face amount of the Purchase Price, subject only to the Permitted Exceptions.

(c) Authority. Such evidence as a Title Company may reasonably require as to authority of the City to convey the Subject Property to Yareton.

2.5.3 Closing Costs. The City shall pay the real estate excise or transfer tax due upon conveyance of the Property, and the premium for an owner's standard coverage policy of title insurance, and one-half of Title Company's closing escrow fee. Yareton shall pay one-half of the Title Company's closing escrow fee, recording fees, and any fees for extended or additional coverage or endorsements Yareton requires.

Once the Subject Property is conveyed to Yareton, the Parties acknowledge that Yareton's development thereof is intended to be primarily a private undertaking without City subsidy of any kind. City participation will be limited to the potential purchase of a public parking component within the Project to be constructed by Yareton and purchased at cost upon completion or on a payment schedule as otherwise agreed upon as a fee owned condominium estate within the development.

The foregoing notwithstanding, Yareton may apply for and benefit from any programs available to it as a developer of real property in the City's downtown core.

2.6 City's Covenants. On or before Closing, the City shall:

2.6.1 Subdivide the Subject Property from tax parcel 2015060011 in order for the Subject Property to be a separately conveyable parcel;

2.6.2 Complete vacation of all areas of right-of-way, including that portion of Broadway that is within the Subject Property, and/or air rights necessary to the development of the Project.

2.7 Standards. The Parties shall perform the terms of this Agreement according to the following standards:

2.7.1 All construction hereunder shall comply with, and be performed in accordance with, the approved Development Plan, Design Guidelines, this Agreement, and all applicable Legal Requirements.

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

### Section 3. Development.

3.1 Generally. Yareton and its contractors, subcontractors, agents and employees shall construct and complete Phase One of the Improvements on the Subject Property as specifically described and depicted in the approved Development Plan in conformance with the Construction Schedule. Yareton agrees that once construction has begun on the Improvements, it will proceed diligently (subject only to delays for Force Majeure) with such construction until the Improvements and the Project have been completed.

The City agrees, in its proprietary role to use all commercially reasonable efforts to assist Yareton (a) in its due diligence prior to conveyance of the Subject Property, (b) in all other preparatory efforts prior to commencement of construction, and (c) in the actual construction of the Project; provided that the City shall provide no assistance that could be considered a subsidy in the City's determination.

3.2 Conditions Precedent to Conveyance of the Subject Property. The following conditions shall have been satisfied before the City conveys the Subject Property:

3.2.1 Compliance with Agreement. The Parties must be in full compliance with this Agreement, including, without limitation, being in compliance with all Legal Requirements, having completed the boundary line adjustment/short plat, and being in receipt of all initial permits for construction of the buildings.

3.2.2 Construction Cost Estimate. Yareton shall have provided a current construction cost estimate for the Phase One Project by Yareton's general contractor.

3.2.3 Financing Plan. Yareton shall have provided, and the City shall have approved Yareton's Financing Plan. The Financing Plan shall identify in detail Yareton's sources for 100% of the cost of the Phase One Project. City approval not to be unreasonably withheld.

3.2.4 Project Entitlements. Yareton must be reasonably satisfied with the results of its due diligence that it will be able to complete the Project in accordance with the Development Plan and the Construction Schedule. Initial Project permits for construction of the buildings must be ready for issuance and pickup upon conveyance.

3.2.5 Hotel Operator Agreement. Yareton must have entered into an agreement, acceptable to the City, with a hotel operator to operate the hotel to be built. The operating agreement (to operate a 4-star hotel on the Subject Property) must be for a minimum of five years commencing upon grand opening of the Project. As part of the conveyance of the Subject Property, Yareton shall enter into a covenant to keep an operating 4-star hotel on the Subject Property (whether under the initial operator, or a successor) for a minimum of 25 years. A copy of the agreement with the hotel operator, and any franchise agreement for the hotel will be provided to the City prior to Closing.

3.2.6 Room Block Agreement. Yareton must have entered into a Room Block Agreement with the City.

3.3 Permits and Approvals. Yareton shall be responsible for obtaining building and mechanical permits, electric, water, and all other required permits or approvals for construction of the Project. The City agrees to act in its regulatory role with all due dispatch in order to facilitate Yareton's compliance with the Construction Schedule.

3.4 City Review during Construction. After conveyance of the Subject Property, the City shall have the right to enter the Property at any time during the construction of the Project for the purpose of inspecting the same to assure itself that the Project is being developed pursuant to the accepted Development Plan and the terms of this Agreement. Upon completion of construction and prior to occupancy, Yareton shall deliver to the City two complete sets of as-built drawings for the Project.

3.4.1 Project Progress Reports. Yareton shall submit quarterly reports to the City by January 15th, April 15th, July 15th and October 15th of each year that this Agreement is in effect until completion of Phase One of the Project that describe the construction progress made on the Project. The City shall review the information, and if progress is stalled, shall work with Yareton to determine how to achieve performance.

3.4.2 Financing Information. Yareton shall share the following information with the City if and when the same becomes available during the initial due diligence and/or second stage due diligence periods:

3.4.2.1 Any letter from the United States Customs and Immigration Service stating that it has extended Yareton's regional center to include the Subject Property for the intended uses (regional center approval); and

3.4.2.2 Any letter from the United States Customs and Immigration Service that provides approval of the specific hotel and mixed use development project (project approval); and

3.4.2.3 Any copy of Yareton's Private Placement Memorandum (PPM) which acts as an investment prospectus that stipulates the terms and conditions of the EB-5 funding.

### 3.5 Earnest Money and Extension Fees.

3.5.1 Earnest Money. Yareton has deposited a total of \$1,150,000 in earnest money to the City. Provided that there is no Event of Default by Yareton under this Agreement, and the Subject Property is successfully conveyed, both payments of earnest money and accrued interest will be applicable to the agreed upon purchase price of the Subject Property. If after an Event of Default by Yareton under this Agreement prior to Closing, or Yareton is otherwise unwilling or unable to close on the Subject Property and Commence Construction according to the Construction Schedule, Yareton shall forfeit \$287,500 plus interest accrued thereon as damages to the City, and this Agreement shall terminate. A total of \$862,500 plus accrued interest would be returned to Yareton.

3.5.2 Extension Fees. As consideration for the City extending time for Yareton's performance, forgoing other potential opportunities to develop the Subject Property, the enhancement to GTCC operations from an implemented Room Block Agreement, as well as the tax revenues that would have been derived

from a development that was completed according to the original schedule, Yareton paid a \$125,800.00 extension fee in 2016. That fee was to be applied to the purchase price only if Yareton did not request additional time for performance. Yareton has requested additional time for performance which is granted in this Amended, but the \$125,800.00 will now be applied by the City to GTCC wall repairs as described in Exhibit C or to cover other project-related expenses. In addition as consideration for the additional time for performance granted in this Amended Agreement, Yareton will pay an additional non-refundable \$200,000.00 which will be applied by the City to GTCC wall repairs as described in Exhibit C. The City is fully responsible for the design, engineering, construction, and any additional costs arising out of the GTCC wall repairs.

3.6 Standards of Performance. The Parties shall perform the terms of this Agreement according to the following standards:

(a) Comply with the approved Development Plan and specifications, and the terms and conditions of this Agreement;

(b) Perform in a good and workmanlike manner and in compliance with all applicable laws, ordinances, rules and regulations;

(c) Use code compliant materials that are of first-class quality and workmanship;

(d) Provide utilities adequate in capacity and service for the intended operation and use of the Subject Property;

(e) If the City elects to have public parking constructed, the City and the Yareton will agree as to what comprises the cost of constructing a parking stall.

(f) Allow open access by the City to all Project records and accounting to allow the City to monitor use of any grant or loaned proceeds/funds used in the Project.

3.7 Project Manager. Yareton shall appoint and name a project manager as a single point of contact for issues related to the Project. This Project Manager will interface with City staff on a regular basis to ensure the Project remains on target. The Project Manager will have expertise in planning (entitlement process, zoning, etc.) as well as construction management.

3.8 City Parking. As part of this Amended Agreement, the City desires to acquire parking to be constructed as part of the Phase One Project to meet existing contractual obligations and support GTCTC operations.

3.8.1 Levels 4 and 5 Parking. The City shall purchase the entirety of Levels 4 and 5 of the parking garage that will be constructed as part of the Project (the "City Levels"). The reference herein to the City Levels (4 and 5), shown as Exhibit G1 and G2 respectively, is taken from drawings submitted under building permit BLDCN17-0014 (the "Drawings"), and the City's agreement to purchase the City Levels is dependent on construction of the City Levels being in substantial conformance with the Drawings. In addition, the City Levels shall conform to the following specifications:

- Medium parking spaces in the City Levels shall not be less than 8'-6" inches in width x 16'-6" long;
- Small parking spaces in the City Levels shall not be less than 8' in width x 16' long;
- No more than fifteen percent (15%) of the total parking stalls on the City Levels shall be small spaces;
- Building columns may not intrude into the minimum parking stall size of any stall on the City Levels;
- The City Levels shall have access directly from Court C at Level 4;
- Garage ramps and drive aisle dimensions must be approved by City staff; and
- The City Levels must meet the minimum City Code for ADA accessible parking stall requirements and State Code for Electric Vehicle charging infrastructure per WAC 51-50-0427.

The price for the City Levels shall be \$33,361 per stall, inclusive of all hard and soft costs, taxes and fees, to be paid, upon approval by the City, to Yareton on a schedule to be determined in writing by the parties.

3.8.2 Additional Parking. In addition to the foregoing, Yareton hereby grants to the City the option to purchase up to forty (40) additional stalls on Level 6 of the Garage for the same price set forth above on Level 6 of the Garage in order to bring the total number of City stalls on three contiguous City levels up to a minimum of 160 to replace the stalls displaced by the Project on the Subject Property by the Project (the "Level 6 Option"). The location of the Level 6 Option stalls the City may elect to acquire is noted in Exhibit G to this Amended Agreement. The City must exercise the Level 6 Option, if at all, by giving Yareton written notice no later than June 30, 2018 at 5:00 pm PST. Should the City elect to



purchase stalls on the sixth level, it shall pay Yareton according to the same agreed to schedule. The price for the Level 6 Option, if exercised, shall be payable at the same time as the purchase price for the City Levels. Level 6 stalls shall substantially comply with the specifications for the City Levels as set forth above and elsewhere in this Amended Agreement.

3.8.3 Prohibition on Encumbering Parking. Neither Yareton nor its agents or affiliates shall encumber the public parking component of the Project in any way, either while in the ownership of Yareton or at any time prior to conveyance to the City unless such encumbrance provides for the partial release of the City parking stalls upon payment by the City of the purchase price therefor.

3.8.4 Parking Exchange. The Parties further agree to exchange the right to use and operate certain stalls on Level 6 with Level 2 stalls in the existing Convention Center parking structure with the intention that the City will control Level 6 stalls shown as Exhibit G-1 in exchange for Yareton having use and operation over the equal number of stalls on Level 2 shown as Exhibit G-2 in the existing Convention Center parking structure for use as valet stalls or other uses. The total number of stalls exchanged in this arrangement will be dependent on the number of stalls that the City purchased pursuant to the Level 6 Option above. The location of these stalls is noted in Exhibit G to this Amended Agreement, which includes City-owned stalls Yareton will use at no cost in the existing Convention Center parking structure and Yareton-owned stalls the City will use at no cost in the new Yareton parking structure. The Parties acknowledge that the final terms and conditions of this exchange and use will be memorialized in the Parties' Parking Use, Operation and Maintenance Agreement or CC&Rs to be entered into at or around completion of construction.

3.8.5 Parking Rates. Yareton agrees that the rates it charges for any public transient/monthly parking shall be established at no less than market rate. For purposes of this section, "market rate" shall mean the average charged for parking by similarly situated parking operators in the downtown Tacoma area.

3.9 Completion Delay Damages: Yareton has agreed to a deadline of not later than May 31, 2020 to achieve Substantial Completion of the Phase One Project. This date is a material term of this Amended Agreement. Any delay in achieving substantial completion past that date damages the City by causing the City to forgo other potential opportunities to develop the Subject Property, the enhancement to GTCC operations from an implemented Room Block Agreement, as well as the tax revenues that would have been derived from a development that was completed according to the agreed schedule. In circumstances not amounting to a Default as defined herein, the City will nevertheless be damaged. Yareton is

required to achieve Substantial Completion of the Phase One Project by May 31, 2020, but will be allowed a seven-month final completion period until December 31, 2020 within which it will not have to pay liquidated damages as long as it is diligently working toward obtaining a Certificate of Occupancy. In the event that Yareton has not obtained a Certificate of Occupancy on or before December 31, 2020, Yareton shall pay the City liquidated damages of \$6,000/day for failure to complete the Improvements.

Upon expiration of the final completion period, the City will invoice Yareton on a monthly basis for each day that it has not received a Certificate of Occupancy on or before December 31, 2020. The amount due shall be paid by the 10<sup>th</sup> of the following month.

### 3.10 Common Project Concerns.

3.10.1 Cross Access The Parties understand and acknowledge that due to the close proximity of the Improvements to be constructed in the Project and the GTCC and the desired synergies to be created between the two, cross access will need to be established between the Project and the GTCC. The Parties agree to use their best efforts to establish all necessary and beneficial cross access points between the two. Easements and other matters relevant to such cross access shall be memorialized in the Declaration.

3.10.2 Off-site Improvements Yareton acknowledges that certain off-site improvements may be required as part of the entitlements process for the Project.

3.10.3 Utilities The Parties acknowledge that additional utility infrastructure will be needed to provide, at least, electric power to the Project. The City has made its Tacoma Public Utilities Division (“TPU”) aware of the Project and TPU has provided the schedule and information attached hereto as Exhibit F for the Parties’ benefit.

3.10.4 Access to Parking Under the GTCC. Yareton understands and acknowledges that the City needs to maintain access to existing parking underneath the GTCTC at the “A” Garage even during construction of the Project. Currently, access to the “A” Garage is achieved across the Subject Property (currently the Broadway Street public right-of-way) and maintaining such access after conveyance of the Subject Property will require the City to retain an easement. Prior to conveyance, the City and Yareton will work together to determine the most cost-effective solution to preserve the City’s access into the future and during construction of the Project, and any resulting obligations shall be

accounted for by agreement of the parties.

3.10.5. To the extent that the Project is designed in a manner that will require shared use of existing City facilities at the GTCC, Yareton will pay its proportionate share of operation and maintenance expenses for such shared use. Yareton's right to such use and other obligations (such as payment) related thereto will be memorialized in the Declaration.

3.11 Non-Discrimination. In the implementation of this Agreement, including construction of all Improvements and any leasing in the Project, neither party shall discriminate against any person or entity by reason of race, color, creed, national origin, age, handicap, marital status, sex, or religion. In the event of a breach of any of these nondiscrimination covenants, subject to the cure provisions herein, the City shall have the right to exercise all of its remedies for default hereunder.

3.12 Governmental Regulatory Approvals and Permits. Each party, for its respective parts of the overall Project, shall apply, as part of its development costs, 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. The City will cooperate with Yareton to obtain all such permits, licenses, permissions, consents and approvals, but without liability, cost, or expense to the City except in the event the City elects to develop public parking as part of the Project. Any agreement by the City to cooperate does not in any way obligate the City to any particular outcome, in its role as regulator rather than collaborator in the Project, with respect to usual and customary City permitting, code compliance and other regulatory reviews as they may relate to Yareton's requirements hereunder. The outcome of any regulatory review or action undertaken by the City involving Yareton will be independent of and in no way biased, prejudiced, or predetermined in any way by this Agreement. Nothing in this Agreement is intended or shall be construed to require that the City exercise its discretionary authority under its regulatory ordinances in a manner unduly favorable to Yareton.

In the event that any delay in Project milestones is caused by the City in its governmental/regulatory role in connection with the permitting or approval of the Project or portion thereof, after Yareton has submitted complete applications, such delay shall not be grounds for the City to claim default under this Agreement.

#### Section 4. Obligations, Approvals and Indemnity.

4.1 Utilities. Unless otherwise agreed in a written amendment hereto, the City shall not be responsible for any of the physical aspects of demolition or site preparation in connection with the Project or any existing improvements on the Subject Property. The City makes no representations as to the availability or suitability of utility connections to the Subject Property. Yareton shall make arrangements for utility services directly with utility service providers for their respective development portions of the Project. Any costs of installation, connection, relocating or upgrading shall be paid by the Parties on a pro-rated basis determined by the actual location of use and user, including, but not limited to, water, sanitary sewer and storm sewer mains, streetlights, traffic lights, electric utilities and fire hydrants.

4.2 Approvals. Approval by the City, in its regulatory role, of any item pursuant to this Agreement including the Development Plan shall not constitute a representation or warranty by the City that such item complies with Legal Requirements or Design Guidelines and the City assumes no liability with respect thereto. Approval by the City, in its regulatory role, of any item pursuant to this Agreement including the Development Plan shall not constitute or guarantee issuance of any permit, license, permission, consent or approval required by any Governmental Authority or third party 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 any plans shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or any obligation on the City to insure that work or materials are in compliance with the plans or any building requirements imposed by the City in its regulatory capacity or by any other governmental entity.

4.3 Indemnification of the City.

4.3.1 Yareton 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 Yareton's predevelopment activity, construction activity, or arising in any manner out of its activities on the Subject Property, including the construction of the Improvements on the Subject Property, including any act or omission of Yareton or its members, agents, employees, representatives, contractors, subcontractors, successors, assigns or invitees, on or with respect to the Subject Property. The City shall not be entitled to such indemnification to the extent that such claim, liability, loss, damage, cost or expense is caused by the negligence or willful misconduct of the City. This indemnification shall survive expiration of this Agreement.

Promptly following receipt of notice, the City shall give Yareton written notice of any claim for which Yareton has indemnified the City hereunder, and the relevant party shall thereafter vigorously defend such claim on behalf of the City. Failure to give prompt notice to Yareton shall not constitute a bar to the indemnification hereunder unless such delay has prejudiced Yareton in the defense of such claim. If Yareton is required to defend any action or proceeding pursuant to this Section 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, Yareton shall bear the cost of the City's defense, including reasonable attorneys' fees and costs. No settlement of any non-monetary claim shall be made without the City's written approval, not to be unreasonably withheld.

4.3.2 Yareton agrees to include in each construction contract for construction of the Project or other work on the Subject Property 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 Yareton and the City. Further, each contractor shall agree to indemnify and hold the City harmless for damages attributable to the contractor's negligence.

4.3.3 The City shall indemnify, defend, and hold Yareton 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 the City's negligence or other legally culpable conduct in performing its obligations under this Agreement.

4.4 Permits. Yareton acknowledges that the City has not made any representation or warranty with respect to Yareton'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 to 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. Yareton understands that the City will process applications for permits and approvals in accordance with its normal processes and this Agreement.

## Section 5. Certificate of Completion.

5.1 Certificate of Completion. Upon substantial completion of either phase of the Project in accordance with this Agreement and satisfaction of the other conditions of this Section, the City will furnish Yareton with a recordable

Certificate of Completion, substantially in the form attached hereto as Exhibit E hereto. Notwithstanding the foregoing, the City shall not be required to issue a Certificate of Completion if Yareton is not then in material compliance with the terms of this Agreement relevant to construction of the Improvements. In addition, if punchlist items remain when Yareton requests a Certificate of Completion, the City may require as a condition to the issuance thereof that Yareton 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 Yareton agrees to proceed with all reasonable diligence to complete the punchlist items.

5.2 Meaning and Effect of Certificate of Completion; Termination of Agreement. Issuance by the City of Certificates of Completion for the final phase of the Project may terminate this Agreement (if the Parties are in agreement to so terminate) and each of its provisions except for the provisions described below that expressly survive termination of this Agreement. Any party thereafter acquiring any portion of the Improvements (such as the public parking component if elected by the City) shall not (because of such purchase or lease) have any obligation whatsoever under this Agreement.

5.3 Form of Certificate of Completion; Procedure if the City Refuses to Issue. If the City refuses or fails to provide a Certificate of Completion in accordance with the provisions of this Section 5, the City, within fifteen (15) business days after written request from Yareton for such Certificate of Completion, shall provide Yareton with a detailed statement indicating in what respects Yareton 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 the City, to obtain such Certificate of Completion. Upon receipt of such detailed statement, Yareton shall complete the Improvements and cure the alleged deficiency/default in a manner responsive to the stated reasons for disapproval or submit to binding arbitration (pursuant to Section 5.4 herein) the issue of whether the City has unreasonably withheld issuance of such Certificate of Completion. Failure by the City to furnish Yareton with such detailed statement within such fifteen (15) day period shall be deemed an approval by the City of Yareton's request for Certificate of Completion.

5.4 Arbitration. If Yareton elects arbitration under Section 5.3 above, the following provisions shall apply.

5.4.1 Selection of Arbitrator. If the Parties are able to agree upon a single arbitrator within twenty (20) days after written notice by one party to the other of its desire to arbitrate a dispute under Section 5.3, 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 an arbitrator. Within twenty (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 5.4 shall possess knowledge or experience of the building and construction industry.

5.4.2 Arbitration Procedures. Upon selection of the arbitrator(s), said arbitrator(s) shall determine the questions raised in said notice of demand for arbitration within twenty (20) days, unless a different period of time is otherwise agreed upon by the parties. Said arbitrator(s) shall then give the Parties reasonable notice of the time (which time shall be within thirty (30) days of the arbitrator(s)' determination of the questions raised, unless a different period of time is otherwise agreed 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 thirty (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.

5.4.3 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, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by both/all parties to the arbitration.

Section 6. Damage or Destruction and Insurance; Condemnation.

6.1 Damage or Destruction. At all times during construction of the Project, Yareton shall maintain insurance in types of coverage and amounts based on replacement value.

6.2 Condemnation. If during the term of this Agreement, the whole or any substantial part of the Subject Property is taken or condemned by the exercise of eminent domain powers (or by conveyance in lieu thereof), such that Yareton can no longer materially meet its obligations under this Agreement, this Agreement shall terminate upon the date when possession of the Subject 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 the activities contemplated hereby. If a taking occurs that is not substantial, this Agreement shall continue in full force and effect as to all parts of the Subject Property not taken.

Section 7. Limitations on Yareton's Rights to Assign, Transfer or Encumber the Subject Property. Due to the economic and operational significance of the Subject Property to the City, any assignment or transfer of any right or obligation hereunder, and any encumbrance upon the Subject Property after Closing but prior to the issuance of the Certificate of Completion shall be subject to the prior written approval of the City. During the term of this Agreement, any approved assignment, transfer or encumbrance of the Subject Property shall be made expressly subject to the terms, covenants and conditions of this Agreement.



7.1 “Transfer” as used herein includes any sale, conveyance, transfer, or assignment whether voluntary or involuntary, of any interest in the Subject Property and includes transfer to a trustee in bankruptcy, receiver or assignee for the benefit of creditors, any merger, consolidation, liquidation or dissociation of Yareton (or any parent/controller member entity), or any transfer of a controlling interest in the management of either. Excluded from the definition of a Transfer are leases of space within the Project and the encumbrance of the Project by Yareton’s lenders and/or investors, provided that the City has approved such lenders and/or investors when the City approves Yareton’s Financing Plan in writing.

7.2 If the City approves of a transfer under this Section 7, the transferring party 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 the transferring party under this Agreement in a form reasonably satisfactory to the City.

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

Section 8. Default. Any party’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:

8.1 The failure of Yareton to substantially comply with the standards of performance for the Project as set forth in this Agreement.

8.2 The failure of Yareton to enter into a Room Block Agreement between the City and Yareton which is binding upon Yareton, its hotel operator and its successors and assigns.

8.3 The failure of Yareton to comply with the terms of any Financing Obligations, and such failure is not cured within any time permitted by the City or Yareton’s lender(s) holding such obligation.

8.4 The failure of Yareton to construct the Improvements substantially in accordance with the approved Development Plan.

8.5 The failure of Yareton to Commence Construction after Closing, or the failure of Yareton to achieve Substantial Completion of the Phase One Project in accordance with the Construction Schedule, subject to Force Majeure as defined herein.

8.6 Conversion of any portion of the Subject Property or the Improvements to any use other than the uses permitted in this Agreement.

8.7 The failure of Yareton to satisfy the indemnities set out in this Agreement.

8.8 Yareton's making 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.

8.9 The appointment of a receiver or trustee of the property of Yareton, which appointment is not vacated or stayed within sixty (60) days, or the filing of a petition in bankruptcy against Yareton or for the reorganization of either under any bankruptcy or insolvency law which is not dismissed or stayed by the court within sixty (60) days after such filing.

8.10 The failure of Yareton to provide and maintain any security required under this Agreement, including but not limited to, the construction performance bonds.

8.11 Any sale, assignment or other transfer in violation of Section 7 of this Agreement.

8.12 The City's failure to complete the subdivision required to convey the Subject Property or any right-of-way vacation necessary for the Project.

Upon the happening of any of the above described events, the non-defaulting party ("NDP") shall notify the defaulting party ("DP") in writing of its purported breach, failure, or act above described. Except in the case of Section 8.8, 8.9, and 8.10 above as to which notice but no cure period shall apply, and as to which the occurrence of the event described therein shall be deemed an "Event of Default" hereunder, the DP's failure to cure such breach, failure or act, within thirty (30) days from receipt of such notice (or if such failure cannot reasonably be cured within 30 days, if the DP fails to promptly commence and diligently pursue such cure to completion) shall be deemed an "Event of Default" hereunder.

Section 9. Remedies.

9.1 Remedies Upon Default. If an Event of Default shall occur, the NDP shall have all cumulative rights and remedies under law or in equity, including, but not limited to, the following:

9.1.1 Damages. The DP shall be liable for any and all damages incurred by the NDP, except that the DP shall not be liable for consequential damages incurred by the NDP.

9.1.2 Specific Performance. The NDP shall be entitled to specific performance of each and every obligation of the DP under this Agreement without any requirement to prove or establish that the NDP does not have an adequate remedy at law. The DP hereby waives the requirement of any such proof and acknowledges that the NDP would not have an adequate remedy at law for the DP's commission of an Event of Default hereunder.

9.1.3 Injunction. The NDP shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an Event of Default and to obtain a judgment or order specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that the NDP does not have an adequate remedy at law. The DP hereby waives the requirement of any such proof and acknowledges that the NDP would not have an adequate remedy at law for the DP's commission of an Event of Default hereunder.

9.1.4 Copy of Notice of Default to Mortgagee. In the event that the City has approved encumbrance of the Subject Property by mortgage after conveyance to another party, whenever the City shall deliver any notice or demand to Yareton with respect to any breach or default by either 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 approved by the City at the last address of such holder shown in the records of the City. Yareton agrees to keep such contact information with the City current.

9.1.5 Mortgagee's Option To Cure Defaults. In the event that the City has approved encumbrance of the Subject Property by mortgage after conveyance to Yareton, after any default in or breach of this Agreement by Yareton or any 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 thirty (30) days after Yareton's failure to cure said default or

breach prior to the expiration of an 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 the City in writing of its intention to complete the Project according to the approved final construction documents. Any Mortgagee who shall properly complete the Project shall be entitled, upon written request made to the City, to issuance of a Certificate of Completion in accordance with Section 5 above.

9.1.6 Rescission and Reconveyance to the City. In addition to the general remedies above, in the event that Yareton fails to Commence Construction after Closing, and subject to Force Majeure as defined herein, the City shall be entitled to the following specific remedy (the “Rescission Option”).

9.1.6.1 Failure to Commence Construction. If Yareton fails to Commence Construction of Phase One of the Project by the Construction Commencement Date set forth herein, August 15, 2017, the City shall have the option to rescind the sale of the Property by written notice to Yareton (the “Pre Commencement Rescission”) by refunding the purchase price paid by Yareton for the Subject Property under this Amended Agreement.

9.1.6.2 City Waiver of Rescission Right. If City has not exercised its Pre Construction Rescission rights in writing by the 90th calendar day after the missed Construction Commencement Date, or the Construction Cessation Date respectively, then the City shall be deemed to have waived its right to exercise its Rescission Option.

9.1.6.3 Closing of Rescission Reconveyance. The closing of the reconveyance of title and execution of any required ancillary documents pursuant to the rescission shall be not later than sixty (60) calendar days following the City’s exercise of the Rescission Option on a business day selected by the City on not less than fifteen (15) days written notice to Yareton. If Yareton fails to reconvey the Subject Property to the City and/or to execute of any required ancillary documents then Yareton shall pay to the City liquidated damages in the amount of \$1,000 per day until the Subject Property is reconveyed as required in this section. The parties agree that the City’s damages in the event of such delay are difficult to measure and such liquidated damages are a reasonable estimate of the damages that the City will suffer for Yareton’s delay in reconveying the Subject Property as provided herein (but are not intended as a measure of damages for

Yareton's failure to reconvey the Subject Property).

Yareton shall pay all transfer and excise taxes (to the extent not exempt under WAC 458-61A-209) in connection with such transfer. The deed will be in the same form as used to convey the Subject Property to Yareton. Upon such reconveyance to the City, no encumbrances shall exist on title other than those that existed when title transferred to Yareton, those consented to by the City in writing (except any Mortgage, which shall not be a permitted encumbrance) and those that were recorded as part of the closing of the acquisition of the Property. Yareton shall be responsible for obtaining the release of any Mortgage. If the City exercises the Rescission Option, Yareton shall be released from further obligations under this Agreement, except those that by their terms expressly survive termination. If Yareton Commences Construction prior to the City's exercise of the Rescission Option, the Rescission Option shall terminate. At Yareton's request, upon Commencement of Construction, the City shall provide written confirmation to a Mortgagee that Commencement of Construction occurred to satisfy a condition of a Mortgagee to advance funds under a construction loan.

9.1.6.4 City Reacquisition of Phase Two Property. If Yareton fails to complete construction of Phase One of the Project by May 31, 2020, and Phase Two of the Project has not begun vertical construction, the City shall have the option to purchase Revised Parcel C noted on the Boundary Line Adjustment recorded on June 9, 2017 (the "Repurchase Option"), which Yareton has reserved for Phase Two of the Project, at the pro-rated price per square foot for which it sold the Property. If the City does not exercise its option by the 90<sup>th</sup> day after May 31, 2020, then the City shall be deemed to have waived its right to exercise the Repurchase Option.

9.2 Post-Conveyance. Yareton acknowledges that construction of the Convention Center hotel and mixed use project is its priority and pledges diligently to complete it on schedule. In the event that Yareton halts construction, specifically of the podium, tower and garage, for longer than 60 calendar days, and subject to Force Majeure as defined herein, the City shall be entitled to the following specific remedy, in addition to the general remedies above (the "Post Conveyance Option"). Insufficient funding shall not be an acceptable reason for delaying construction as Yareton shall ensure that it has made every effort to provide the cash flow in the U.S. to continue construction without interruption and complete the project, including disposing of and refinancing its U.S. and other assets.

9.2.1 Issue Resolution. Yareton shall be required to meet with the City within 10 days of the City's notice and propose a plan to address the issue(s)

related to the construction work stoppage. The City must approve the plan, which such approval shall not be unreasonably withheld.

9.2.2 Property Conveyance. If Yareton is unable to fulfill the Development Agreement requirements and complete construction in a timely manner according to the schedule, it shall be required to work with the City to find another buyer to assume its contractual obligations. The City may issue a Request for Interest or use other means to solicit developers to complete the project. Yareton shall provide its full cooperation to participate in marketing the site and ultimately transferring it to a responsible third party, which must be approved by the City.

Section 10. 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 signing 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.

All of the representations and warranties of the City contained in this Agreement are made to the best of the City's knowledge, as represented by the knowledge of the individual who would have the most knowledge of the respective representation or warranty, (i) shall be true and correct in all material respects as of the date of this Agreement and as of Closing and the truth thereof shall be a condition to Closing; and (ii) Yareton's rights to enforce such representations and warranties and covenants shall survive Closing and such rights to enforce shall not be merged into any documents delivered by the City at Closing. The parties shall indemnify, defend and hold the other harmless from and against any cause, claim, loss, damage or expense, including attorney's fees, which that party suffers as a result of a breach of the representations, warranties and covenants made to that party as contained in this Agreement.

Section 11. Dispute Resolution. The Parties shall use good faith efforts to resolve all claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement (each a "Matter in Dispute") using the procedures set forth herein, subject to the Arbitration Requirements for disputes involving issuance of the Certificate of Completion in Section 5, herein.

11.1 Senior Management. If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Agreement in writing of the dispute, but in any event within fifteen (15) days after the dispute arises. If the

Parties shall have failed to resolve the Matter in Dispute within fifteen (15) days after delivery of such notice, each party shall nominate a senior administrator or manager within its organization with authority to bind such party to meet at a mutually agreed location to attempt to resolve the Matter in Dispute. Should the senior officers be unable to resolve the Matter in Dispute within fifteen (15) days of their nomination, the Parties shall submit the Matter in Dispute to Mediation as provided as a condition precedent to pursuing other alternative dispute procedures or litigation.

11.2 Mediation. If prior to completion of construction of the Project a Matter of Dispute arises between City and Yareton, the Parties shall proceed in good faith to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of design and construction of the Project is not delayed. If, however, the Parties are unable to resolve the dispute, they agree to utilize the mediation process contained herein, which will be nonbinding but a condition precedent to having said dispute decided in court by a judge or jury; provided, however, that the City and Yareton may agree in writing to waive this condition.

11.2.1 Mediation Process. City or Yareton, by delivering written notice to the other, may refer any dispute described above to any natural person not employed by either City or Yareton or an affiliate of either who shall be approved by mutual agreement of City and Yareton (“Mediator”).

11.2.2 Consideration of Disputes or Claims. Upon receipt by the Mediator of written notice of a dispute, either from City or Yareton, the Mediator shall convene a hearing to review and consider the dispute. Both City and Yareton shall be given the opportunity to present their evidence at this hearing. Both City and Yareton are encouraged to provide exhibits, calculations and other pertinent material to the Mediator for review prior to the hearing.

11.2.3 Procedures. Upon the first referral to the Mediator of a Matter in Dispute hereunder, the Mediator shall, with the agreement of the Parties, establish procedures for the conduct of any hearings for consideration of disputes and claims. The conduct of the Mediator’s business shall, in general, be based on this Agreement. Unless the City and Yareton agree otherwise, the Mediator shall issue its recommendation as soon as possible but in any event not later than sixty (60) days following referral of the dispute to the Mediator.

11.2.4 Independence of Mediator. It is expressly understood that the Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by City and Yareton, and that the recommendations concerning any such dispute are advisory only. The

Mediator's recommendations shall be based on the pertinent Agreement provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the Parties.

11.2.5 City's Responsibility. City shall furnish the Mediator one copy of all documents it might have, other than those furnished by the Yareton, which are pertinent to the performance of the Mediator.

11.2.6 Yareton's Responsibility. Yareton shall furnish the Mediator one copy of all documents it might have, other than those furnished by the City, which are pertinent to the performance of the Mediator.

11.2.7 Coordination. The Parties will coordinate to effectively assist the Mediator's operation.

11.2.8 Payment. The fees charged by the Mediator shall be shared equally by the Parties. Payments shall be full compensation for work performed, services rendered, and for all materials, supplies, travel, office assistance and support and incidentals necessary to serve. Payment for services rendered by the Mediator and for the Mediator's expenses shall be at the rate or rates established by the Mediator. The Mediator may submit invoices for payment for work completed not more often than once per month during the progress of the work. Such invoices shall be in a format approved by both Parties, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Mediator. The invoiced amount shall be divided in half and clearly stated. A copy is to be sent to City and Yareton for payment. Satisfactorily submitted invoices shall be paid within sixty (60) days.

11.3 Litigation. Only after the mediation has concluded, may either party seek resolution of the Matter in Dispute through litigation and for any such litigation, jurisdiction and venue shall thereafter be in the Superior Court of the State of Washington for Pierce County.

## Section 12. Miscellaneous.

12.1 Estoppel Certificates. The Parties 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 or subtenant designated by Yareton, 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 Yareton, 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.

12.2 Inspection. Until the Certificate of Completion is recorded, the City shall have the right, at all reasonable times and upon at least twenty-four (24) hours previous notice, to inspect on a confidential basis the books, records and all other documentation of Yareton pertaining to its obligations under this Agreement. The City shall have the further right at all reasonable times upon the same notice to inspect the Subject Property, including any construction work thereon, to determine compliance with the provisions of this Agreement and any permits.

12.3 Entire Agreement. This Agreement, the Project Documents and any documents attached as exhibits hereto, contain the entire agreement between the Parties as to the subject matter hereof and supersede all prior discussions and understandings between them with reference to such subject matter.

12.4 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. Any material change in design of the Project from the approved Development Plan must be approved by the City in writing.

12.5 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. Any consent or approval by a party required hereunder shall not be unreasonably withheld.

12.6 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.

12.7 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 the City: Community and Economic Development Department  
City of Tacoma  
747 Market Street, 9th Floor  
Tacoma, Washington 98402  
Attn: Director  
Fax: (253) 591-5232

With a copy to: City Manager  
City of Tacoma  
747 Market Street, 12th Floor  
Tacoma, Washington 98402  
Fax: (253) 591-5123

To Yareton: Albert Sze  
Yareton Investment & Management WA L.L.C.  
22444 Pacific Highway South  
Des Moines, Washington 98198  
Fax:

With a copy to: Ramina Dehkoda Steele  
Wong Flemming  
10675 Willows Road NE, Suite 250  
Redmond, WA 98052  
Fax: 425-869-4050

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) 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, or (c) sent by facsimile transmission to the party and 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.

12.8 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.

12.9 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 granting the waiver; and no such waiver shall be construed to be a continuing waiver. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

12.10 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

12.11 Applicable Law; Jurisdiction. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington without recourse to any principles of Conflicts of Laws. In the event any action is brought to enforce any of the provisions of this Agreement, the parties agree to be subject to jurisdiction in the Pierce County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

12.12 No Joint Venture. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between/among the Parties. The Parties intend that the rights, obligations, and covenants in this Agreement and the Project Documents shall be exclusively enforceable by the Parties, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein.

12.13 Consents. Whenever consent or approval by the City is required under the terms of this Agreement, all such consents or approvals, if given, shall be given in writing from the City Representative and shall not require the additional

action of the City Council unless the City Representative or the City's counsel determines that such action is necessary. Approval of any document that may be approved by the City Representative under this Agreement shall be given, if given, in writing, by the City Representative, and the City Attorney shall approve such document as to form.

12.14 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington.

12.15 Conflict of Interest. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to Yareton or any successor in interest upon the occurrence of any default or breach by the City or for any amount which may become due to Yareton or its successors or on any obligations under the terms of this Agreement.

12.16 Discrimination. Yareton, for itself and any 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.

12.17 Attorneys' 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, each party shall bear its own attorneys,' paralegals, accountants,' and other experts' fees and all other 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.

12.18 Non-waiver of Government Rights. The parties understand that the City by making and entering into this Agreement is not obligating the City to give governmental approvals, or to take particular action in its governmental capacity.

12.19 Captions; Exhibits. The headings and captions of this Agreement are for convenience of reference only and shall be disregarded in construing 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.

12.20 Force Majeure. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default with regard to performance in accordance with the Construction Schedule or any time periods stated in this Agreement where delays to performance are due to Force Majeure.

Subject to the exclusions in Subsection 2 of this definition, and as more specifically defined below, Force Majeure means any act, event or condition that is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement, and that directly affects the performance of this Agreement, by materially expanding the scope of the obligations of either party hereunder, materially interfering with, or materially delaying the performance of the obligations of either party hereunder, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such party.

12.20.1 Inclusions. Subject to the foregoing, Force Majeure may include, but is not limited to, the following:

(a) A material change in law, except as otherwise provided in this Agreement;

(b) Naturally occurring events (except weather conditions reasonably anticipated for the climate in which the Project is located) occurring within a fifty (50)-mile radius of downtown Tacoma and directly affecting the performance of this Agreement, such as landslides, underground movement, earthquakes, fires, tornadoes, floods, lightning, epidemics and other acts of God;

(c) Explosion, terrorism, sabotage or similar occurrence, war, blockade or insurrection, riot or civil disturbance occurring in the State of Washington and directly affecting the performance of obligations under this Agreement;

(d) The failure of any contractor or subcontractor (other than Yareton or any affiliate) to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event

which would constitute a Force Majeure event if it affected Yareton directly, and Yareton is not able after exercising all reasonable efforts to timely obtain substitutes;

(e) The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Property;

(f) A violation of Applicable Law by a person other than the affected party or its subcontractors;

(g) With respect to Yareton, any City fault under this Agreement; or

(h) With respect to the City, any fault of Yareton under this Agreement, or

(i) Any delay caused by any Governmental Authority that restrains, enjoins, delays or precludes the commencement, prosecution, or completion of the Project that is beyond Yareton's control.

12.20.2 Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Force Majeure:

(a) Any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;

(b) Changes in economic conditions, including, but not limited to, changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates;

(c) Changes in the financial condition of Yareton, or its parents, affiliates or subcontractors affecting the ability to perform its respective obligations under this Agreement;

(d) The consequences of error, neglect or omissions by Yareton, any of its parents or affiliates or any other person in performing its obligations under this Agreement;

(e) Union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed by Yareton or otherwise increasing the cost to Yareton of performing its obligations under this Agreement;

(f) Weather conditions reasonably anticipated for the City of Tacoma, Washington;

(g) Any act, event, circumstance or Change in Law occurring outside of the United States;

(h) Mechanical failure of equipment used or supplied by Yareton to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;

(i) The accuracy or inaccuracy of any as-built drawings provided by the City which could have been verified by Yareton without excavations, cutting through equipment or structures, draining or removing materials from equipment or structures;

(j) Labor disputes involving employees of Yareton, its parents, or affiliates, contractors, or subcontractors;

(k) Any impact of prevailing wage or similar law, customs or practices on Yareton's costs;

(l) Failure of the City in its governmental capacity to approve any design submittals that do not comply with applicable law or this Agreement;

(m) Failure of Yareton to secure any patent or other intellectual property right which is or may be necessary for the performance of the work.

For any Force Majeure delay that will cause substantial completion of the Project to be delayed more than thirty (30) days, Yareton will keep the City informed about the cause and nature of such delay and the progress in achieving such substantial completion. Times of performance under this Agreement may also be extended in writing by the City and Yareton.

12.21 Amendments Requested by a Party or Mortgagees. The City agrees to execute amendments to this Agreement or separate agreements or Project

Documents from time to time, to the extent reasonably requested by Yareton or a proposed Mortgagee, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of the City or its interest in the Subject Property, the Project or under the Project Documents.

12.22 Provisions Surviving Termination. The indemnifications and Hold Harmless, and the Room Block Agreement according to its terms, shall survive any termination of this Agreement including issuance of a Certificate of Completion.

12.23 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.

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

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

**CITY OF TACOMA**

**YARETON INVESTMENT &  
MANAGEMENT (WASHINGTON) L.L.C.**

\_\_\_\_\_  
Elizabeth Pauli, City Manager

\_\_\_\_\_  
Chun Yang, Chief Executive Officer

Approved:



\_\_\_\_\_  
Ricardo Noguera, Director  
Community and Economic  
Development Department

\_\_\_\_\_  
Andrew K. Cherullo,  
Finance Director

Attest:

\_\_\_\_\_  
Doris Sorum, City Clerk

Approved as to form:

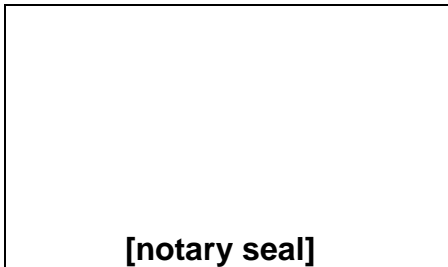
\_\_\_\_\_  
Steve Victor,  
Deputy City Attorney

\_\_\_\_\_  
Risk Manager

STATE OF WASHINGTON)  
  ) ss  
COUNTY OF PIERCE            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared **Elizabeth Pauli**, to me known as the **City Manager**, of the CITY OF TACOMA who on oath stated that he was authorized to execute the within and foregoing instrument, and acknowledged it to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.



\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON)  
  ) ss  
COUNTY OF PIERCE            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared **Chun Yang**, to me known as the Chief Executive Officer of **YARETON INVESTMENT & MANAGEMENT (WASHINGTON) L.L.C.** who on oath stated that he was authorized to execute the within and foregoing instrument, and acknowledged it to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

[notary seal]

\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

## **EXHIBIT "A"**

### **Legal Description of Subject Property**

Property Description S 17<sup>th</sup> & Broadway

That portion of the Northwest quarter of the Southwest quarter of Section 04, Township 20 North, Range 03 East, W.M. more particularly described as follows:

Lots 14 through 26, inclusive, Block 1506, Map of New Tacoma, Washington Territory, according to the Plat filed for record February 3, 1875 in the office of the County Auditor, Pierce County, Washington.

Together With; Lots 14 through 23, inclusive, Block 1505, Map of New Tacoma, Washington Territory, according to the Plat filed for record February 3, 1875 in the office of the County Auditor, Pierce County, Washington.

Also Together With; that portion of vacated South Broadway Street abutting Lots 14 through 18, inclusive, of said Blocks 1506 and 1505, as vacated by City of Tacoma Ordinance No. 269585 and recorded under Auditors File No. 200207310894, records of Pierce County Auditor.

Also Together With; that portion of South Broadway Street abutting Lots 19 through 23, inclusive, of said Blocks 1506 and 1505, as proposed for future vacation.

**EXHIBIT "B"**  
**ROOM BLOCK AGREEMENT**

**EXHIBIT "C"**  
**Development Plan/Construction Schedule**

**A. Phase One of the Project:** Constructing on the Subject Property (1) a 4-star hotel containing not less than 300 rooms, (2) in-hotel retail and at least 9,100 sf of street level retail, (3) a minimum 10,000 net sf Grand Ballroom and 8,900 net sf of other function rooms within the hotel and providing the GTCC the first right of use as specified in the Room Block Agreement with the GTCC; (4) not less than 200 private parking stalls and (5) a plaza;

**B. Phase Two of the Project:** If supported by Yareton's pro forma and market demand after completion and stabilization of Phase One, constructing on the Subject Property (1) a minimum of 200 condominiums and/or market rate apartments, (2) at least 20,000 sf of street level retail and (3) not less than 200 private parking stalls. Yareton may also construct commercial office space as part of the mixed use development;

**C. 4-Star Hotel.** Yareton will enter into an agreement with a City-approved 4-star hotel operator which may include an agreement with a 4-star hotel franchise, which approval shall not be unreasonably withheld.

**D. Room Block Agreement.** Yareton will fully execute a Room Block Agreement between the City and Yareton which is binding upon Yareton, its hotel operator and its successors and assigns for so long as the hotel and GTCC operate;

**E. Public parking.** Yareton will design and construct public parking on the Subject Property approved by the City, and subject to the terms of the Amended Agreement to meet existing contractual obligations and/or accommodate increased public demand; if required by the City. Public parking must begin at street level on Commerce Street, all levels must be contiguous, and must be established as a legally separate ownership to be owned by the City. If approved by the City, the City may pay for approved parking stalls upon completion, or on a payment schedule, as otherwise agreed between the parties and shall be responsible for the cost of separating legal ownership;

**F. Access During Construction.** Yareton will maintain public/vehicular access to the existing Greater Tacoma Convention and Trade Center parking, by permanent recorded easements or other legally binding means;

**G.** Schedule. Yareton will Commence Construction not later than August 15, 2017. Yareton has provided to the City a detailed Construction Schedule developed by its general contractor with a date for Substantial Completion of Phase One not later than the end of May 31, 2020. (Attached to this Exhibit).

**H.** Convention Center South Wall Repair. In addition to the foregoing, as part of Phase One Project, the Extension Fees furnished by Yareton as consideration for the additional time afforded for performance in the Third Amendment to the agreement, and in this Amended Agreement will be applied by the City primarily to repair the south wall of the Convention Center.

**I.** Wayfinding. As part of the Phase One Project, Yareton shall be responsible for the cost of designing and installing wayfinding signage within the hotel building and on the Subject Property. On premises signage shall be subject to the approval of Marriott International, Inc. Wayfinding signage shall be installed prior to the date the Certificate of Occupancy is issued by the City for the hotel. Yareton shall work with the City to identify off premises opportunities where signage may be helpful, such as along the major highways and urban arterials.

**J.** The Canyon. As part of the Phase One Project, Yareton and the City shall revisit the use of the ground level space (approximately 30 feet) between the Convention Center and the hotel to determine its reuse, the benefit each party will accrue from its reuse, and the associated costs and responsibilities each party will assume as necessary. Decisions related to its reuse, operation and maintenance shall be made by the parties within six months from the date a Certificate of Occupancy is issued by the City for the hotel, and ongoing responsibilities included in the CC&Rs.

**K.** SBE and LEAP. In accomplishing the Development Plan, Yareton agrees to include measures designed to promote environmental sustainability through the incorporation of conservation design elements and green building principles. Yareton also agrees to consult with City staff regarding how Yareton can incorporate Small Business Enterprise (“SBE” as set forth in Tacoma Municipal Code Chapter 1.07) and Local Employment and Apprenticeship Training Program (“LEAP” as set forth in Tacoma Municipal Code Chapter 1.90) participation in construction of the Project.

**EXHIBIT “D”**  
**Declaration of Covenants, Easements and Restrictions**

To be developed jointly by the parties, and attached upon completion.

**EXHIBIT "E"**

**Form of Certification of Completion**

After recording return to

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

**CERTIFICATE OF COMPLETION**

GRANTOR: CITY OF TACOMA

GRANTEE: **YARETON INVESTMENT & MANAGEMENT (WASHINGTON)  
L.L.C. (Yareton)**

Legal Description

Assessor's Tax Parcel No(s):

Related Document: Amended and Restated Development Agreement (Doc. No. \_  
\_\_\_\_\_)

The CITY OF TACOMA, a Washington first-class City, acting in its proprietary capacity ("the City"), hereby certifies that **YARETON INVESTMENT & MANAGEMENT (WASHINGTON) L.L.C.**, a Washington limited liability company ("Yareton"), has satisfactorily completed construction of the Improvements on the Property as such Improvements are described in the Amended and Restated Development Agreement dated \_\_\_\_\_, 2014 (the "Agreement"), which was recorded in the Records of the Pierce County Auditor, Washington, as Document No. \_\_\_\_\_, on \_\_\_\_\_, 2014.

This Certificate of Completion is and shall be a conclusive determination that Yareton 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 pursuant to Section 5 of the Agreement.

Notwithstanding this Certificate of Completion, Section 9.1 of the Agreement provides for the survival of certain covenants as between the City and Yareton, and nothing in this Certificate of Completion affects such survival.



The Agreement is hereby terminated and to the extent it is an encumbrance on the Property is released from title to the Property.

IN WITNESS WHEREOF, the City has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

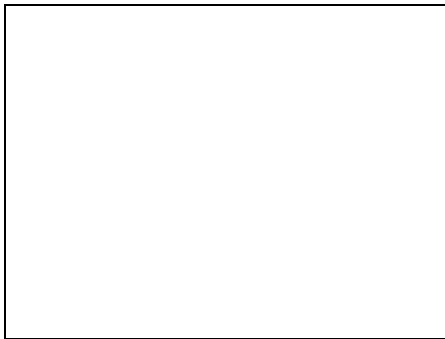
CITY OF TACOMA

By \_\_\_\_\_  
**Elizabeth Pauli, City Manager**

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF PIERCE        )

I certify that I know or have satisfactory evidence that Elizabeth Pauli 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 CITY OF TACOMA to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.


Dated: \_\_\_\_\_, \_\_\_\_\_.



(Use this space for notary seal)

\_\_\_\_\_  
Notary Public  
Print/Type Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

## EXHIBIT "F" TPU Schedule

 <p><b>TACOMA POWER</b> TACOMA PUBLIC UTILITIES</p>	<p>3628 South 35<sup>th</sup> Street Tacoma, Washington 98409-3192</p>
	<p>TACOMA PUBLIC UTILITIES</p>
<p>May 21, 2014</p> <p>Walkowiak, Ellen (Elly)</p> <p>Subject: Convention Center Hotel Condo proposal located on the existing parking lot on Broadway between the Convention Center and S. 17<sup>th</sup> Street</p> <p>Dear Ms. Walkowiak:</p> <p>Tacoma Power is providing a summary of the requirements for service to the proposed hotel/condo complex in downtown Tacoma. You will find discussions of our assumptions, timelines, level of service and historic system reliability discussed below.</p> <p><b>Tacoma Power's attached cost estimate contains the following design assumptions:</b></p> <ul style="list-style-type: none"><li>-Two buildings are to be served:<ul style="list-style-type: none"><li>A 28-34 story tower with 150 condominium units &amp; 300 hotel rooms</li><li>Also a 12-18 story tower with 220 condominium units</li></ul></li><li>The plan includes 60k-sq-ft of commercial space and 400 parking stalls.</li><li>-Electrical loading is estimated at 3MVA</li></ul> <p>-The extension of power duct system to this site from S. 17<sup>th</sup> Street. -The extension of supply feeders from our nearest substations. -The customer is to provide vault(s) for service transformers &amp; equipment -The customer's costs are based upon current customer service policies.</p> <p>Easements may be required depending on the ownership and platting arrangements on the site itself.</p> <p><b>Project relocation and construction time estimates:</b></p> <ul style="list-style-type: none"><li>-The construction of the new feeder systems is expected to take up to 1-1/2 to 2 years.</li><li>-The construction of the duct system could be completed within 9 months of bidding the civil work.</li><li>- The installation of transformers and switch gear in the customer's vault takes approximately 6 months to construct.</li><li>-The entire project is expected to take 2 years to construct after design is completed.</li></ul> <p><b>Level of Power System Redundancy proposed:</b></p> <ul style="list-style-type: none"><li>-Primary and alternate power feeders.</li><li>-High voltage automatic transfer switches.</li></ul> <p><b>Outage history:</b></p> <p>The downtown area experienced four feeder outages and an area wide outage related to a major switching station equipment failure in the last 11 years. These events were mitigated by having redundant feeder supply systems and the application of automatic transfer switches. The outage durations varied between minutes to three hours.</p>	

The power system in the downtown area is highly reliable. The power service serving this block would have two power sources provided to enhance reliability and provide for transparent system maintenance. The maintenance to the building's power system would be scheduled.

If you have any questions, please do not hesitate to contact me at 253-502-8297.

Sincerely,

Chang Choi  
 Assistant Transmission & Distribution Manager  
 Engineering

Cost estimate to extend power and provide onsite switches and transformation for the Convention Center Hotel and Condominium project (May 20, 2014 CED plan request based upon minimal specific data)		Total Cost	TPWR Portion	Developer Portion
<b>Underground Civil Infrastructure Conduit, Vaults and Trench-</b>	New civil infrastructure is required to extend feeder from S. 17 St. to the Convention Center site. <input type="checkbox"/> The estimated trench/duct costs for TPWR are \$800/ft x 200ft <input type="checkbox"/> The new duct on Broadway (4) conduits <input type="checkbox"/> Road restoration of 12ft. width of the street replacement costs in the vicinity of the trench. <input type="checkbox"/> An additional 8'x 14' power vault	\$205,000	\$0	\$205,000
<b>Service at the buildings</b>	<input type="checkbox"/> Installing one 2500kva and one 1500kVA, 480/277V vault style transformers. <input type="checkbox"/> Installing an auto transfer switch	\$440,000	\$0	\$440,000
<b>12.5kV Feeder extensions from Hilltop and Nisqually Subs.</b>	<input type="checkbox"/> The costs include the pulling & terminating of one new feeder from Nisqually Sub at the Customer's expense. <input type="checkbox"/> The costs include the pulling & terminating of one new feeder from Hilltop Sub at Tacoma Power's expense	\$760,000	\$380,000	\$380,000
<b>Sub Total</b>		<b>\$ 1,405,000</b>	<b>\$ 380,000</b>	<b>\$1,025,000</b>
<b>30% Contingency</b>		<b>\$ 421,000</b>	<b>\$ 114,000</b>	<b>\$ 307,000</b>
<b>Total</b>		<b>\$ 1,826,000</b>	<b>\$ 494,000</b>	<b>\$ 1,332,000</b>

## Convention Center Hotel & Condominium Towers Conceptual Tacoma Power Engineering, Procurement & Construction Schedule

ID	Task Name	Duration	Start	Finish	2014	2015	2016	2017	2018
1	Convention Center Hotel/Condo Develop	655 days?	Mon 8/19/14	Fri 12/18/17	Q4 14 1st Qtr 15 2nd Qtr 15 3rd Qtr 15 4th Qtr 15 1st Qtr 16 2nd Qtr 16 3rd Qtr 16 4th Qtr 16 1st Qtr 17 2nd Qtr 17 3rd Qtr 17 4th Qtr 17 1st Qtr 18 2nd Qtr 18 3rd Qtr 18 4th Qtr 18				
2	TPWR Engineering & Contract	40 days	Mon 8/19/14	Fri 9/12/14					
4	Engineering & Long Lead Material & Equip	1 day?	Mon 8/19/14	Mon 8/19/14					
5	Engineering	281 days?	Tue 8/19/14	Tue 8/24/16					
9	TPWR Procurement	290 days	Wed 8/20/14	Tue 8/23/17					
13	Construction Contract Payment	1 day?	Fri 12/12/17	Fri 12/12/17					
14	TPWR System Modification	118 days	Wed 8/13/17	Tue 8/14/17					
15	Developer Site Construction	380 days	Mon 8/11/16	Fri 12/18/17					

Project: Super Block project schedule  
Date: Mon 8/20/14

Task: SMTL

Progress:  Milestone:

Summary:  External Milestone:

Deadline:  0

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