

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DECLARING CERTAIN )	RESOLUTION NO. 23-5346
PROPERTY SURPLUS AND AUTHORIZING A )	
LEASE OF A PORTION OF THE IRVING )	Introduced by Chief Operating Officer
STREET GARAGE )	Marissa Madrigal in concurrence with
	Council President Lynn Peterson

WHEREAS, Metro owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "MRC"), which includes a four-level parking garage situated in the northeast corner of the MRC known as the "Irving Street Garage"; and

WHEREAS, the Irving Street Garage has 460 parking stalls, available to both Metro employees and the general public on a monthly or daily basis; and

WHEREAS, Boyland Auto Portland, LLC, owns and will shortly be opening a Kia dealership across the street from the MRC; and

WHEREAS, Boyland Auto Portland, LLC, desires to lease the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Floors of the Irving Street Garage (the "Premises") at a rate that exceeds the revenue Metro currently generates from the 349 parking stalls located therein; and

WHEREAS, Metro does not currently use the Premises for its operations and desires to lease the Premises to Boyland Auto Portland, LLC; now therefore,

BE IT RESOLVED that the Metro Council hereby:

1. Declares the Premises surplus property as it is not needed for public use during the term of the proposed lease; and
2. Authorizes the Chief Operating Officer to negotiate and execute a lease for the Premises with Boyland Auto Portland, LLC, provided the terms are substantially similar to those described on Exhibit A and the form of agreement is approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 15th day of June 2023.



\_\_\_\_\_  
Lynn Peterson, Council President

Approved as to Form:



\_\_\_\_\_  
Carrie MacLaren, Metro Attorney

**Exhibit A to Resolution No. 23-5346**

**BASIC LEASE TERMS FOR PREMISES**

1. **PERMITTED USE.** The Premises may only be used and occupied solely for parking lot purposes to provide parking of automobiles that Tenant sells, leases, loans, or services as part of Tenant's car dealership business.
2. **LEASE DURATION:** The initial term of the Lease will be 4 years.
3. **EXTENSION RIGHTS:** Tenant will have the right to extend the Lease for five additional three-year periods by providing written notice to Metro prior to the expiration of the current term. However, Metro will have the right to reject any such extension by providing Tenant with written notice of its rejection. If Landlord rejects any extension, the Lease will thereafter expire at the end of the current term.
4. **BASE MONTHLY RENT.** The base monthly rent shall be \$21,000. Beginning on July 1, 2024, and on each succeeding July 1st thereafter during the initial term (including any extensions thereof), the Base Monthly Rent will increase 3% per annum over the rate charged for the immediately preceding twelve-month period.
5. **TENANT EARLY TERMINATION RIGHT.** If, during the first property tax year that property taxes are assessed against the Tenant's leasehold interest, the amount of such taxes exceeds \$69,600 (which equates to \$5,800 per month), Tenant will have the one-time right to terminate the Lease prior to the expiration of the initial 4-year term.
6. **SECURITY AND MAINTENANCE RESPONSIBILITIES FOR ENTIRE GARAGE.** Tenant will at its expense, maintain in good order, condition and repair both the Premises and the remaining one floor of the Irving Street Garage. Among other things, Tenant's responsibilities will include daily cleaning and refuse (including biohazardous materials) removal, graffiti removal, and providing consistent and regular (i.e., daily, if needed) janitorial services to the entire Irving Street Garage. Tenant will also be responsible for providing reasonable safety and security for the entire Irving Street Garage, which includes removing vandalism, securing access to all water and utility lines, addressing camping of individuals, loitering, and all other unauthorized uses.

FOR THE PURPOSE OF DECLARING CERTAIN PROPERTY SURPLUS AND AUTHORIZING A LEASE OF A PORTION OF THE IRVING STREET GARAGE

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Date: June 1, 2023  
Department: Capital Asset Management  
Meeting Date:

Prepared by: Rory Greenfield,  
rory.greenfield@oregonmetro.gov  
Presenter(s), (if applicable): N/A  
Length:

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**ISSUE STATEMENT**

Boyland Auto Portland, LLC has proposed to lease three floors of the Irving Street Garage (adjacent to the Metro Regional Center), in which they would house inventory for the Kia car dealership across the street. The proposed four-year lease would be at a rate of \$21,000 per month – or \$1.01 million over the initial four-year term. Metro would retain one floor of the garage for its continued use.

Per State law and the Metro code, Council action is needed to declare the garage as surplus and authorize the COO to enter into the lease.

**ACTION REQUESTED**

As per the resolution attached, two actions are requested:

1. Declare the Premises surplus property because it is not needed for public use during the term of the proposed lease.
2. Authorize the Chief Executive Officer to enter into a lease agreement with Boyland on terms substantially similar to those attached to the resolution.

**IDENTIFIED POLICY OUTCOMES**

This resolution generates additional revenue, supports employee safety, and provides flexibility for future uses:

- The additional \$1.01 million in General Fund discretionary revenue can be used to support MRC operations and capital needs, along with other Metro priorities;
- Boyland will secure and maintain the entire garage, relieving MRC campus operations staff of having to deal with potentially unsafe conditions;
- The initial four-year lease period gives Metro flexibility to reevaluate the garage for future uses and opportunities. Although Boyland has options to renew, Metro may reject such options should it desire the lease to expire at the end of the term.

**POLICY QUESTION(S)**

Should Metro enter into the lease with Boyland Auto Group for the next four years or explore other uses of this parking structure?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

If Metro does not lease the garage, Metro could either (1) retain the current use of the garage, or (2) explore other uses of the garage.

1. Retain current use of the garage. Under this scenario, Metro would continue to operate the garage at a loss of \$40,000/year (inclusive parking management agreement, pressure washing, and biohazard expensive; exclusive of staff time and vandalism costs). Safety, cleaning, and vandalism issues would remain a concern.
2. Explore other uses of the garage. The primary purpose of the garage is to house vehicles. Currently, there is no demand for parking in the Lloyd District as a result of the dramatic shift in employees working from home in neighboring businesses. Due to the location to the inner city and transit, the location of the Irving Street Garage likely has better purposes that would be more consistent with Metro values, such as affordable housing. This type of project would take multiple years to advance prior to construction in order to secure land use, financing, partnerships etc. The current lease terms provide Metro with the flexibility to develop options for other uses by not committing to a longer-term lease.

## **STAFF RECOMMENDATIONS**

Staff recommends taking the actions listed above. Doing so will bring revenue to Metro and make the MRC a safer campus.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Beginning in FY 19-20 with the onset of the pandemic, annual revenue from the Irving Street garage fell to \$590,000, with total net revenue for the past two years of \$8,700. Average parking collections per month are about \$4,300, while average expenses are approximately \$5,000, equating to a roughly \$700/month loss.

The annual revenue from this lease is \$252,000. This is a significant revenue increase for Metro compared to current day trends and has been confirmed to be a fair current market price by our broker. The 4-year lease requires Boyland to keep the structure maintained and secure, and provides us flexibility to decide whether or not to extend the lease at the end of the term.

This agreement will also address cleaning/maintenance and safety needs of garage.

*Cleaning and Maintenance Needs.* Currently, Metro's MRC Campus Operations team cannot keep up with the cleanup needs of the vacant garage. Several times a week the garage is vandalized, experiences vehicle break-ins, has people camping in it, finds its stairwells littered with human waste and drug paraphernalia, and has water lines and electrical outlets broken to gain access to these resources. Rapid Response, Metro's biohazard clean-up contractor, is onsite Sun – Thursday when they clean human waste, trash and drug paraphernalia; Metro pays \$2100 per month for this service. Additionally, Metro pays \$550 per visit for monthly pressure washing of the garage stairwells, primarily to address human waste.

*Safety Needs.* Current conditions are a safety issue for MRC Campus Operations staff and other staff coming to the MRC to work. Employee vehicles have been broken into and many of the individuals encountered in the garage have been verbally abusive and physically threatening to Campus Operations staff.

As part of the lease, the Boyland will secure, clean, and provide day-to-day maintenance of the entire garage, including the one floor retained by Metro. This lease should ensure better management of the garage/property, bring revenue back to the agency and address the safety issues it poses.

## **BACKGROUND**

Adjacent to the Metro Regional Center is a 4-level, 460 stall public parking garage referred to as the “Irving Street Garage”. Metro has owned and contracted out the operation of this garage since the agency occupied the MRC in 1992. Pre-pandemic, the garage catered to customers seeking monthly and daily parking and was used by visitors to the Lloyd District and the MRC, employees of businesses and agencies within the Lloyd District, and by Metro employees. Annual average revenues from the Irving Street garage were \$802,000 on average.

The property immediately to the north of the MRC (720 NE Grand Ave) has been acquired by an affiliate of Boyland Auto Group. The site is currently undergoing a million-dollar renovation to open a Kia dealership but requires additional parking to house their inventory. Boyland has requested to lease the 2nd, 3rd and 4th floors of the Irving Street Garage, which consists of 360 parking spaces.

If this lease is implemented, the first floor of the Irving garage will remain open to Metro staff and visitors at the current daily rate of \$10. This lease does not affect the underground garage in the MRC. Metro will continue to maintain employee parking in the MRC underground garage.

## **ATTACHMENTS**

[For work session:]

- Is legislation required for Council action?  Yes  No
- If yes, is draft legislation attached?  Yes  No
- What other materials are you presenting today? [INSERT]

## PARKING LOT LEASE

This Parking Lease ("Lease") is made and entered into effective as of July 2, 2023 (the "Effective Date"), by and between Metro, a municipal corporation and political subdivision of the state of Oregon, organized under ORS 268 and the Metro Charter ("Landlord"), and Boyland Auto Portland, LLC, an Oregon limited liability company ("Tenant").

### RECITALS

WHEREAS, Landlord is the owner of a parking structure located at 600 NE Grand Avenue, Portland, Oregon (the "Parking Garage") and desires to lease the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Floors of the Parking Garage (the "Premises") to Tenant.

WHEREAS, Tenant is the owner of improved real property adjacent to the Premises, and desires to lease the Premises from Landlord, pursuant to terms of this Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

### AGREEMENT

1. Agreement: Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises for the duration of the Term (defined in Section 2, below), at the rental rate set forth in Section 3, and upon the conditions set forth in this Lease.

2. Term:

(a) Initial Term. The initial term of this Lease shall commence on July 2, 2023 (the "Commencement Date") shall expire on June 30, 2027 (the "Initial Lease Term"). Landlord will deliver possession of the Premises to Tenant on the Commencement Date.

(b) Extension Terms. As long as Tenant is not in default, Tenant shall have the right to extend the Lease for five additional three-year periods (each referred to as an "Extension Term") by providing written notice (the "Exercise Notice") to Landlord no less than one hundred twenty (120) days prior to the expiration of the current term; provided, however, that Landlord shall have the right to reject each extension by providing Tenant with written notice of the same (the "Rejection Notice") within forty-five (45) days after Landlord's receipt of an Exercise Notice. If Landlord timely provides the Rejection Notice, this Lease shall expire as of the expiration of then-current term. If Landlord does not timely provide the Rejection Notice, Tenant shall be entitled to use and occupy the Premises for the entire Extension Term, subject to all of the same terms as provided in this Lease. The Initial Lease Term together with any exercised Extension Term are sometimes referred to herein, collectively, as the "Term."

(c) Tenant Early Termination Right. The parties acknowledge that as of the Effective Date, the property taxes that may result from Tenant leasing the Premises are unknown. If, during the first property tax year that property taxes are assessed against the leasehold interest, the amount of such taxes exceeds \$69,600 (which equates to \$5,800 per month), then Tenant shall have the one-time right to terminate this Lease ("Termination Right") which termination will be effective as of the Early Termination Date (as defined below). To effectively exercise its Termination Right, Tenant must (i) provide Landlord a written notice of its election to exercise its Termination Right, along with supporting tax assessment documentation from Multnomah County (the "Termination Notice") (ii)

deliver the Termination Notice to Landlord at any time during the Initial Lease Term, but not less than two months prior to the termination date specified in the Termination Notice (the “Early Termination Date”), and (iii) concurrent with Tenant’s delivery of the Termination Notice, deliver to Landlord an early termination payment in an amount equal to the unamortized broker commissions Landlord will have paid in accordance with Section 24 of this Lease (as determined using monthly straight line amortization computed based on the Initial Lease Term) (the “Early Termination Payment”). Tenant will pay directly (i.e., not through Landlord) all property taxes attributable to the leasehold interest for the entirety of the real property tax year that includes the Early Termination Date. If Tenant timely and properly exercises the Termination Right, Tenant shall thereafter vacate and return possession of the Premises to Landlord in the condition required by the terms of this Lease on or before the Early Termination Date, after which Tenant shall have no further obligations under this Lease except for those accruing prior to the Early Termination Date and those which, pursuant to the terms of this Lease, survive the expiration or early termination of this Lease. Notwithstanding the foregoing, in accordance with Section 6 below, Tenant shall be responsible for any and all real property taxes levied or assessed against the Premises during the term of this Lease.

3. **Base Rent:** Tenant shall pay to Landlord rent, without notice or demand and without abatement, deduction or setoff except as otherwise expressly provided herein, in equal monthly installments of \$21,000.00, in advance on the first day of each month at the office of Landlord or such other place as Landlord may designate. Upon the full execution of this Lease, Tenant shall promptly delivery to Landlord prepaid rent in the amount of \$21,000.00, which will be the Base Monthly Rent due for the first month of the Initial Lease Term. Beginning on July 1, 2024 and on each succeeding July 1<sup>st</sup> thereafter during the Term (including any extensions thereof), the Base Monthly Rent for the Leased Premises shall increase 3% per annum over the rate charged for the immediately preceding twelve-month period. Payments for partial months shall be prorated based on a 30-day month.

4. **Permitted Use, Condition and Maintenance Responsibilities:**

(a) The Premises shall be used and occupied solely for parking lot purposes to provide parking of automobiles that Tenant sells, leases, loans, or services as part of Tenant's car dealership business. The parties acknowledge that currently the Premises has ~~349232~~ parking spaces. If Tenant desires to increase the parking capacity and park more than ~~349240~~ cars on the Premises, Tenant must first obtain a structural engineering study demonstrating that the Parking Garage structure will safely support the weight of additional vehicles. After providing Landlord with a copy of such study, Tenant may park as many vehicles on the Premises as the space safely allows (subject to applicable laws) and in any location within the Premises, without regard to painted lines or other parking space designations, and including without limitation, the right to stack cars vertically on top of each other. Tenant may not use the Premises for any other purpose without the prior written consent of Landlord, which consent may be withheld or delayed in Landlord's sole and absolute discretion.

(b) Tenant hereby accepts the Premises “as-is”, in its condition existing as of the Effective Date, subject to all applicable zoning, municipal, county and state laws, ordinances and regulation governing and regulating the use of the Premises, and any covenants or restrictions of record.

(c) Tenant agrees to, at its expense, maintain in good order, condition and repair both the Premises and remainder of the Parking Garage. Without limiting the above, Tenant shall be responsible for cleaning, power washing, snow and ice removal, and annual leaf removal and annual drain clean outs for the entire Parking Garage, including all stairwells, driveways and parking areas not located within the Premises. Tenant shall be responsible for painting, lighting replacement, daily cleaning and refuse (including biohazardous materials) removal, graffiti removal, and providing

consistent and regular (i.e. daily, if needed) janitorial services to the Parking Garage. Tenant will also be responsible for providing reasonable safety and security for the entire Garage, which includes removing vandalism, securing access to all water and utility lines, addressing camping of individuals, loitering, and all other unauthorized uses within the Parking Garage. Tenant's willingness to take responsibility for these general maintenance, janitorial, and security items for the entire Parking Garage has been factored in to the agreed upon rental rate agreed upon by the parties. Furthermore, the parties acknowledge that having Tenant be the single provider of all maintenance, janitorial, and security measures for the Parking Garage is the most efficient way to ensure that the entire Parking Garage is managed and operated at a level satisfactory to both parties. If, to carry out its Parking Garage maintenance responsibilities, Tenant needs to coordinate with Landlord to access portions of the Parking Garage not within Tenant's control, Tenant will provide Landlord with not less than forty-eight (48) hours' prior written notice of its access needs and both parties will make reasonable efforts to facilitate Tenant's access while minimizing the scope and duration of any interference with Landlord's use.

(d) Landlord shall repair, maintain and replace the structural elements of the Parking Garage (including the Premises) to keep the same in good repair and safe condition. In addition, Landlord will be obligated to arrange regular elevator, fire system and back flow device maintenance. Landlord shall have the right, but not the obligation, to access the Premises and perform any other repairs, alterations, replacements, and improvements it reasonably deems necessary to keep the Premises and the Parking Garage in good repair and condition provided (a) it gives Tenant not less than forty-eight (48) hours' prior written notice of its intent to access the Premises (except that, in the event of an emergency, it shall only be required to give such prior notice, if any, as may be reasonable under the circumstances) and (b) it uses reasonable efforts to minimize the scope and duration of any interference with Tenant's use. Except as specifically set forth in this Lease to the contrary, Landlord shall not be required to furnish any services or facilities or to make any repairs, replacements, or maintenance of any kind in or on the Premises or the Parking Garage.

##### 5. Alterations:

(a) Tenant shall not make or permit to be made any alterations, additions or improvements ("Alterations") to the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; provided, however, that Tenant may, without the consent of Landlord, make non-structural Alterations that cost less than \$25,000 and do not require any governmental approvals or permits. Together with any request for consent to any Alterations, Tenant shall submit to Landlord plans and specifications for the proposed work and the name of the general contractor and/or subcontractors that will be performing the work. Landlord may grant or withhold its consent or may impose as conditions to its consent as Landlord deems necessary, in its sole judgment, to protect its interests and to make the proposed Alterations compatible and comparable with the quality, design and structural characteristics of the Parking Garage. All Alterations shall be constructed in a good and workmanlike manner and in compliance with all applicable laws and all other provisions of this Lease.

(b) All Alterations constructed and installed by Tenant shall, when made, become the property of Landlord, and at the expiration or termination of this Lease shall be surrendered to Landlord in as good order as when installed, ordinary wear and tear, casualty and condemnation excepted. Notwithstanding the forgoing, Landlord may, at its option, notify Tenant at any time that Tenant will be required to remove some or all of its Alterations from the Premises upon the expiration or termination of this Lease, and in that event, Tenant shall remove those Alterations from the Premises upon the expiration or termination of the Lease and shall repair or restore the Premises to their original condition prior to the installation of such Alterations, ordinary wear and tear, casualty and condemnation excepted.

Commented [A1]: Rory/Ryan, did you decide you are OK with this?



**6. Taxes; Utilities:**

(a) Tenant shall pay when due all personal property taxes assessed against its personal property or equipment on the Premises. In the event any real property taxes are assessed against the Premises as a result of this Lease, Tenant shall pay such taxes assessed when due.

(b) Except as allocated to Tenant above, Landlord shall pay when due any other taxes and assessments assessed against the Parking Garage, and all charges for water and electricity utility services. Utilities for the Premises are not separately metered and Landlord's estimate of utility costs attributable to the Premises has been included in the Base Monthly Rent referenced in Section 3. However, to the extent that the monthly utility charges which Landlord reasonably attributes to Tenant's use of the Premises (or failure to secure the Parking Garage in accordance with Section 4) exceed \$300.00 per month during the Term, Landlord shall notify Tenant and Tenant shall pay any such excess charges within thirty (30) days following Tenant's receipt of an invoice therefor (and reasonable supporting documentation for the invoice). Interruption of utilities shall not be deemed an eviction or disturbance of Tenant's use and possession of the Premises, render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord will, however, take all reasonable steps to correct any interruption in service caused by defects in the utility systems within Landlord's reasonable control.

**7. Tenant Insurance; Indemnity:**

(a) During the term of this Lease, Landlord shall maintain in full force a policy or policies of standard multi-peril insurance covering the Premises for the perils of fire, lightning, windstorm, and other perils commonly covered in such policies.

(b) Tenant shall at its own expense during the Term carry in full force and effect (i) the most recently approved ISO commercial general liability insurance policy, its equivalent, or a Garagekeepers policy written on an occurrence basis, with limits not less than One Million Dollars (\$1,000,000) per occurrence. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, and premises. Tenant's coverage will be primary as respects Landlord; (ii) a business automobile liability insurance covering owned, non-owned, and hired vehicles with a limit of not less than One Million Dollars (\$1,000,000); (iii) workers' compensation insurance meeting Oregon statutory requirements; and (iv) Two Million Dollars (\$2,000,000) excess or umbrella insurance. Landlord, its elected officials, departments, employees, and agents shall be named as additional insureds on the commercial general liability, automobile, and excess policies. Tenant shall provide to Landlord thirty (30) days' notice of any material change or policy cancellation (only ten (10) days' notice shall be required in the event of cancellation due to non-payment of the premium). On or before the Commencement Date, Tenant shall furnish Landlord with a certificate of insurance complying with the requirements of this Section 7. Tenant shall provide updated certificates of insurance annually.

(c) Subject to the waivers in Section 7(f) below, Tenant shall indemnify, defend, and save harmless Landlord from any and all liability, damage, expenses, attorneys' fees, causes of actions, suits, claims, or judgments, arising out of or connected with (i) the negligence or willful misconduct of Tenant or Tenant's agents, invitees, employees or contractors within the Premises, and (ii) any failure of Tenant to comply with the terms of this Lease; provided, however, that Tenant shall not be liable for claims to the extent caused by the negligence or willful misconduct of Landlord or Landlord's agents,

employees or contractors. Tenant shall, at its own cost and expense, defend any and all suits that may be brought against Landlord either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all settlements paid by or judgments that may be entered against Landlord, regardless of whether a lawsuit is actually filed.

(d) Subject to the waivers in Section 7(f) below, and subject to the maximum liability limits provided for under the Oregon Tort Claims Act and the Oregon Constitution, Landlord shall indemnify, defend, and save harmless Tenant from any and all liability, damage, expenses, attorneys' fees, causes of actions, suits, claims, or judgments, arising out of or connected with (i) the negligence or willful misconduct of Landlord's or Landlord's agents, invitees, employees, contractors, and (ii) any failure of Landlord to comply with the terms of this Lease; provided, however, that Landlord shall not be liable for claims to the extent caused by the negligence or willful misconduct of Tenant or Tenant's agents, employees or contractors. Landlord shall, at its own cost and expense, defend any and all suits that may be brought against Tenant either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all settlements paid by or judgments that may be entered against Tenant, regardless of whether a lawsuit is actually filed.

(e) Any contract between Tenant and a contractor for work on behalf of Tenant at the Premises shall require (i) the contractor to indemnify, save and hold Landlord and Tenant harmless from and against and free and clear of all claims, suits, actions, and damages which may arise, occur or result from work performed by said contractor; and (ii) the contractor to name Landlord and Tenant as additional insureds on contractor's policy of insurance and furnish Landlord and Tenant with a certificate of insurance evidencing such coverage.

(f) Any policy or policies of property insurance which either party obtains in connection with the Premises or Tenant's personal property therein shall include a clause or endorsement denying the insurer any rights of subrogation against the other party for damages, injuries or losses caused by such other party that are covered to by such insurance policies, regardless of any negligence on the part of such other party. Landlord and Tenant waive any rights of recovery against the other for damage to such party's property arising from any occurrence that would be covered by a special form policy of property insurance for the full replacement cost of the applicable item, whether or not such insurance is actually carried by such party.

**8. Tenant's Obligations:**

(a) Tenant agrees to fully comply, at its expense, with all applicable zoning, laws, regulations, ordinances and requirements of any public authority governing and regulating the use and occupancy of the Premises, and all conditions, covenants and restrictions of record now or hereafter in force; provided that Landlord will not voluntarily encumber or permit the Premises to be encumbered, or modify or permit modification of any existing encumbrances, in a manner that would materially affect Tenant's use or operations or increase Tenant's costs or other obligations hereunder, without Tenant's prior written consent. Landlord represents and warrants to Tenant that there are no existing agreements, covenants, conditions, restrictions, or other encumbrances affecting the Premises that would materially and adversely affect Tenant's ability to use the Premises for the purposes contemplated herein.

(b) Tenant shall refrain from any activity that would be unreasonably offensive to Landlord or to owners or users of the adjoining premises, or that would tend to create a nuisance or damage the reputation of the Premises or of any such buildings. Without limiting the generality of the foregoing, Tenant shall not permit any unreasonable noise or odor given Tenant's permitted use to

escape or be emitted from the Premises, nor permit the use of flashing (strobe) lights, nor permit the sale or display of offensive materials as reasonably determined by Landlord.

(c) Tenant shall refrain from making any marks on or attaching any sign, insignia, antenna, window covering, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the written consent of Landlord, which consent may will not be unreasonably withheld.

(c) Tenant shall pay as due all claims for work done on or for services rendered or material furnished to the Premises on the Tenant's behalf, and shall keep the Premises free from any liens based on services rendered or material furnished to the Premises on Tenant's behalf. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and collect such amount as additional rent; provided, however, that Tenant shall have the right to contest such lien, as long as such contest prevents foreclosure of the lien, before being obligated to pay Landlord therefor. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

(d) Tenant shall comply with any reasonable rules respecting the use of the Premises, which may be promulgated by Landlord from time to time, and communicated to Tenant in writing, provided that such rules do not materially affect Tenant's access to and use of the Premises for the purposes contemplated hereunder, increase Tenant's operating costs or materially increase Tenant's obligations under this Lease, or conflict with the terms and provisions of this Lease.

(e) Tenant shall not generate, release, store, or deposit on the Premises any environmentally hazardous or toxic substances, materials, wastes, pollutants, oils, or contaminants, as defined or regulated by any federal, state, or local law or regulation or any other Law (collectively, "Hazardous Substances"). If Tenant knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located on or beneath the Premises or adjacent lands, Tenant must immediately give written notice of that condition to Landlord. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, losses, damages, response costs, and expenses of any nature whatsoever (including without limitation attorneys', experts', and paralegals' fees) arising out of or in any way related to the generation, release, storage, or deposit of Hazardous Substances on the Premises or on Landlord's property by Tenant in violation of this Lease or applicable laws. Landlord acknowledges, however, that a variety of Hazardous Substances are present in automobiles and that small quantities of such Hazardous Substances leaking from automobiles will not be deemed to violate this Lease.

Landlord shall, at its sole cost, comply with, and cause the Premises and the Parking Garage to comply with, all environmental laws, regulations, ordinances and requirements ("Environmental Laws") of any public authority governing and regulating the use and occupancy of the Parking Garage during the Term. Without limiting the foregoing, Landlord shall, at its sole cost, promptly and diligently (i) investigate, remove, monitor, mitigate, and/or remediate any and all Hazardous Substances located in, on, and under the Premises (other than those for which Tenant is responsible under this Section 8(f)) to the extent required by Environmental Laws; and (ii) obtain, maintain, and comply with any and all permits required with respect to the Premises under applicable Environmental Laws. Landlord shall indemnify, defend, and hold Tenant harmless from and against any and all claims, losses, damages, response costs, and expenses of any nature whatsoever (including without limitation attorneys', experts', and paralegals' fees) arising out of or in any way related to arising from (x) any environmental condition existing prior to Tenant's occupancy of the Premises; (y) the release of Hazardous Substances by Landlord or its employees, agents, representatives or other users of the Parking Garage; or (z) any other breach of the requirements under this Section 8(f) by Landlord, except to the extent caused by the negligence or willful misconduct of Tenant.

**9. Default by Tenant:** The following shall be events of default by Tenant:

(a) Payment Default. Failure of Tenant to make any rent or other payment under this Lease within five (5) days after it is due. Rent not paid when due shall bear interest at the rate of one and one-half percent (1 ½%) per month, or if less, the maximum applicable rate of interest permitted by law, until paid. For Rent payments made more than ten (10) days late, Landlord may impose a late charge of five percent (5%) of the Rent past due in lieu of interest for the first month of delinquency. Tenant acknowledges that late payment of any Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to ascertain, and that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment and is not a penalty. Neither imposition or collection nor failure to impose or collect a late charge shall be considered a waiver of any other remedies available for default.

(b) Unauthorized Transfer. Tenant makes any assignment or sublease of all or part of the Premises in violation of Section 15, below.

(c) Abandonment of Property. Tenant abandons the Premises, for which purpose "abandons" means a failure by Tenant to occupy and use the Premises for one or more of the purposes permitted under this Parking Lot Lease for a total of thirty (30) days or more during the Term.

(d) Default in Other Covenants. Failure of Tenant to comply with any other term or conditions or to fulfill any other obligations of this Lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity. However, if the nature of Tenant's obligation is such that more than thirty (30) days are reasonably required for performance then Tenant shall not be in default if Tenant commences performance within such 30-day period and thereafter diligently prosecutes the same to completion within a reasonable period.

**10. Default by Landlord:** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time. However, Landlord shall perform its obligations within thirty (30) days after receiving written notice from Tenant specifying with reasonable particularity where and how Landlord has failed to perform its obligations. However, if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion. Notwithstanding anything in the foregoing to the contrary, in the event Tenant's ability to access or use the Premises is prevented or diminished due to Landlord's failure to perform its obligations hereunder, Rent shall be abated for the period of time commencing when such access and/or use is prevented or diminished until Landlord cures its failure to perform.

**11. Remedies on Default:** Upon default of Tenant beyond applicable grace, notice and cure periods, Landlord may terminate this Lease and exercise any one or more of the following remedies, as well as any other remedy available under applicable law:

(a) Landlord may reenter and retake possession of the Premises either by summary proceedings, force, any other applicable action or proceeding, or otherwise, all without notice to Tenant except as may be required by law or this Lease. Landlord may use the Premises for Landlord's own purposes or relet it upon any reasonable terms without prejudice to any other remedies that Landlord may have by reason of Tenant's default. None of these actions will be deemed an acceptance of surrender by Tenant.

(b) Whether or not Landlord retakes possession or relets the Premises, Landlord may recover all damages caused by the default (including but not limited to unpaid rent, reasonable attorneys' fees relating to the default, and reasonable costs of reletting). Landlord may sue periodically to recover damages as they accrue during the remainder of the lease term without barring a later action for further damages. Landlord may at any time bring an action for accrued damages, plus damages for the remaining lease term equal to the difference between the rent specified in this Lease and the reasonable rental value of the Premises for the remainder of the term, together with interest thereon at the interest rate discounted to the time of judgment at the rate of 1 percent per annum over the discount rate of the Federal Reserve Bank of San Francisco as of the date of such judgment.

(c) Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment required to cure a default by Tenant. The cost of cure, including reasonable attorney's fees and all disbursements, shall immediately be repaid by Tenant upon demand.

**12. Loss or Damage to Premises; Injury to Tenant Property:**

(a) In case of any material loss of or damage to the Premises as the result of fire, storm or other casualty, Tenant may abandon the operation and terminate this Lease by giving at least thirty (30) days' prior written notice to Landlord. Landlord shall be entitled to receive its rent for the period prior to such termination; provided, however, that rent shall be pro-rated and owed only for the portion of the Premises that are suitable for parking. To the extent Tenant does not terminate this Lease following a loss of or damage to the Premises, Tenant's rent shall be equitably adjusted to account for any diminished access to the Premises and any portion of the Premises not reasonably capable of being used for the parking of automobiles.

(b) Landlord shall not be liable for any injury to the goods, stock, merchandise, or any other property of Tenant or to any person in or upon the Premises or to the leasehold improvements in the Premises resulting from fire or collapse of the Building or any portion thereof or any other cause, including but not limited to damage by water or gas, or by reason of any electrical apparatus in or about the Premises. Tenant shall carry adequate insurance coverage at its sole cost and expense to cover the risks described in this Section 12.

**13. Surrender at Expiration:**

(a) Condition of Premises. Upon expiration or sooner termination of the Term, Tenant shall surrender the Premises in the condition that existed as of the Commencement Date. Depreciation and wear from ordinary use for the purpose for which the Premises was let and damage due to casualty need not be restored, but all repair for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

(b) Personal Property. Upon expiration of the Lease, Tenant shall remove all of its personal property from the Premises and restore any damage caused by such removal. If Tenant fails to do so, Landlord may effect a removal and place the property in storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, restoration, transportation to storage, and storage, with interest on all such expenses.

(c) Holdover. If Tenant does not vacate the Premises at the time required, Landlord shall treat Tenant as a tenant from month to month, subject to all of the provisions of this Lease (except that the term will be month to month and monthly rent will be 125 percent of the amount of rent then being paid by Tenant). Failure of Tenant to remove equipment or personal property which Tenant is required to remove under this Lease shall constitute a failure to vacate to which this paragraph shall apply if the

property not removed substantially interferes with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant. If a month-to-month tenancy results from a holdover by Tenant, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than ten (10) days prior to the termination date which shall be specified in the notice. Tenant waives any notice which would otherwise be provided by law with respect to month-to-month tenancy.

- 14. Quiet Enjoyment; Landlord's Temporary Relocation Right:** So long as there is not then an event of default by Tenant under this Lease beyond applicable cure periods, Tenant shall peaceably and quietly have, hold and enjoy the Premises without hindrance, ejection or interference by Landlord or any person lawfully claiming through or under Landlord, subject however to the provisions of this Lease. Notwithstanding the foregoing, the parties recognize that Landlord intends to install solar panels on the 4<sup>th</sup> floor of the Premises at some point during the Term. To facilitate this installation, Landlord hereby reserves the one-time right to temporarily relocate Tenant to space elsewhere in the Parking Garage comparable to the Premises with respect to size (which to be comparable must contain the same amount of parking spaces) for a period of not longer than 120 days; provided, however, that if the solar panels are installed in a location that includes a portion of the Premises or otherwise permanently interferes with Tenant's use of a portion of the Premises, then the relocation will be permanent. Landlord may exercise this relocation right by giving Tenant sixty (60) days prior written notice of Landlord's intention to relocate. The exercise of Landlord's rights pursuant to this Section 14 shall not give rise to any increase or decrease in Rent.
- 15. No Assignment; Successors:** Tenant shall not assign this Lease or sublet all or part of the Premises without the prior written consent of Landlord which may be withheld in Landlord's sole and absolute discretion except that Landlord's consent shall not be required in connection with Tenant's assignment of this Lease to (i) an entity that acquires all or substantially all of the assets of Tenant, (ii) any entity controlling, controlled by, or under common control with Tenant (an "Affiliated Entity"); or (iii) any entity resulting from the merger or consolidation of or with Tenant or an Affiliated Entity. Subject to the foregoing, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.
- 16. SNDA; Estoppels:** Tenant agrees to subordinate its rights under this Lease in writing to the lien of any future deed of trust encumbering the Premises, within twenty (20) days of request, provided the form of the agreement is commercially reasonable and lender agrees not to disturb Tenant's rights hereunder so long as Tenant is not in default under this Lease beyond applicable cure periods. Within ten (10) days after written request of either party, the receiving party agrees to execute and deliver to the requesting party (or its current or prospective lender or a prospective purchaser of its property), an estoppel certificate stating (a) whether this Lease is in full force and effect, (b) any modifications to this Lease, (c) whether any defaults exist under the terms of this Lease, and (d) such other information as may be reasonably requested. If the Property is sold or otherwise transferred by Landlord or any successor to Landlord, Tenant shall attorn to the purchaser or transferee and recognize it as the landlord under this Lease.
- 17. Relationship of the Parties:** No partnership, joint venture, or employment relationship between the parties is created by this Lease.
- 18. Force Majeure:** Neither party shall be in violation of this Lease for failure to perform any of its obligations by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of public authority, weather conditions, riots, rebellion, accidents, sabotage, pandemics or epidemics, governmental shutdowns, restrictions or similar orders, or any other circumstances for which it is not responsible and which are not within its control. No rent shall be due

to Landlord if Tenant suspends operation for any such cause or event and provides Landlord five-days' notice of such suspension. Notwithstanding anything to the contrary contained in this Section 18, in the event a force majeure event occurs and continues for sixty consecutive days, either party may terminate this Lease effective immediately upon written notice to the other party.

- 19. Governing Law:** The Lease shall be governed by and construed in accordance with the laws of the State of Oregon.
- 20. Waivers:** No waiver of default by either party of any term, covenant or condition hereof.
- 21. Severability:** If any provision hereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision hereof, provided such invalidity does not materially prejudice either party in its rights and obligations contained in the valid provisions of this Lease.
- 22. Notices:** Any notice or communication to either party shall be given by personal service or by express delivery, or by mailing the same, postage prepaid, by United States registered or certified mail, return receipt requested, to the following addresses and shall be deemed properly delivered, given or served as follows: (a) the next business day when deposited with FedEx or other overnight delivery service with all delivery charges paid or accounted for, provided such notice is deposited with the courier service in time for delivery by no later than 5:00 p.m. on the next business day; or (b) two (2) business days after being mailed by certified or registered mail, postage prepaid. As used herein, "business day" means Monday through Friday, excluding federal or state holidays.

TO TENANT: Boyland Auto Portland, LLC  
c/o Vierck & Rakoski, CPAs, P.C  
606 S.E. 117th Avenue, Suite 100  
Vancouver, Washington 98683  
Attn: Mark Vierck

WITH A COPY TO: Foster Garvey PC  
121 SW Morrison St., 11<sup>th</sup> Floor  
Portland, OR 97204  
Attn: Kelly Meltzer

TO LANDLORD: Metro  
Marissa Madrigal, Chief Operating Officer  
600 NE Grand Ave.  
Portland, OR 97232

WITH A COPY TO: Office of Metro Attorney  
600 NE Grand Ave.  
Portland, OR 97232  
Attn: Ashley McCarron

Either party may designate a substitute address at any time hereafter by written notice to the other party.

- 23. Entire Agreement:** This Lease, together with all exhibits hereto, constitutes the entire agreement between the parties, and supersedes all representations, statements or prior agreements and understandings both written and oral with respect to the matters contained in this Lease and exhibits

hereto. No person has been authorized to give any information or make any representation not contained in this Lease. This Lease may be amended only by written agreement of the parties.

**24. Brokers:** The following real estate brokers were involved with this Lease: Matt Johnson, Cushman & Wakefield (Landlord’s Broker) and George Diamond, Capacity Commercial (Tenant’s Broker). Landlord will pay a leasing commission to Landlord’s Broker in accordance with a separate agreement between Landlord and Landlord’s Broker. The parties agree that Landlord’s Broker will share the leasing commission in accordance with a separate agreement between Landlord’s Broker and the Tenant’s Broker.

**25. Subordination of Landlord’s Lien:** Within ten (10) business days of written request by Tenant, Landlord shall execute and deliver to Tenant a written subordination of Landlord’s lien rights (if any) against the personal property of Tenant to the rights of any lender of Tenant, in a commercially reasonable form; provided, however, that in the event Landlord fails to timely deliver such written subordination, the subordination provided in this Section 25 shall be self-operative and shall not require the execution of any further instrument or document.

The parties hereto have executed this Lease as of the Effective Date.

**LANDLORD:**

**Metro**, an Oregon municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**TENANT:**

**Boylard Auto Portland, LLC**,  
an Oregon limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

