



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

May 9, 2019

Development Agency Board
Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Resolution Declaring the Public Necessity and Purpose
for Acquisition of Rights of Way, Easements, and Fee Property
for the SE Capps Road Terminus Project and
Authorizing Negotiations and Eminent Domain Actions**

Purpose/Outcome	Under ORS 35.235 and the Federal Uniform Act, a local governmental agency is required to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Public Necessity and Purpose prior to initiating acquisition of the easements or other property rights from abutters to the project.
Dollar Amount and Fiscal Impact	The Right of Way budget for the project is included within the \$2,000,000 approved project budget for 2018-2019 and within the \$1,080,000 project budget for 2019-2020.
Funding Source	Development Agency Funds.
Duration	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
Previous Board Action/Review	Approval of project funding in FY 2018-19 budget
Counsel Review	Reviewed and approved by Counsel on May 1, 2019
Strategic Plan Alignment	Build a strong infrastructure. Build public trust through good government.
Contact Person	Sharan Hams-LaDuca, DTD Sr. Right of Way Agent @ 503-742-4675

BACKGROUND:

The Board of County Commissioners approved funding for the SE Capps Road Terminus Project as part of the Development Agency's 2018-2019 budget. The project will construct a cul-de-sac at the western most terminus of SE Capps Road facilitating new development of two properties and supporting two existing businesses. The cul-de-sac will include four commercial driveway connections, street lighting, sidewalks and improved stormwater facilities.

The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. In order to construct the improvements as designed, additional rights of way and easements will be required. The Board has authority under ORS Chapter 35 to acquire rights of way, easements, and fee property by purchase or condemnation proceedings.

In accordance with the design of the project, the Development Agency (Agency) has developed the legal descriptions required for acquisition of the needed rights of way and easements. To fairly determine the amount of Just Compensation for the needed rights of way and easements, staff will utilize the expertise of a qualified real estate appraiser to make appraisals and/or staff will utilize their own expertise and reliable data sources to prepare Appraisal Waiver Valuations in accordance with applicable law and regulation. The Agency shall utilize qualified consultants to make offers and negotiate in good faith in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner.

The resolution directs the Department to negotiate in good faith and accordance with all applicable laws, rules, and regulations governing such acquisitions, in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. The resolution further requires the Manager of the Development Agency to notify the Board if the exercise of the power of eminent domain becomes necessary. Only after this process is completed does it authorize the Office of County Counsel to file a condemnation action.

Staff respectfully requests that the Board approve a Resolution of Necessity and Purpose for the acquisition of necessary rights of way and easements to provide for construction of the SE Capps Road Terminus Project.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the Resolution authorizing the acquisition of necessary rights of way and easements by negotiation if possible, or condemnation, if necessary.

Respectfully Submitted,

David Queener
Clackamas County Development Agency Program Supervisor

Attachments:

Ordinance

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

A Resolution Related to the SE Capps Road Terminus
Project Declaring the Necessity and Purpose
for Acquisition of Rights of Way, Easements,
and Fee Property and Authorizing Negotiations
and Eminent Domain Actions

Resolution No. _____
(Page 1 of 2)

WHEREAS, this matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on May 9, 2019 and,

WHEREAS, it appearing to the Board that funding for the SE Capps Road Terminus Project ("Project") was included within the Development Agency (Agency) approved 2018-2019 budget; that the Project will provide for the construction of a cul-de-sac at the western most terminus of SE Capps Road facilitating new development of two properties and supporting two existing business; that the Project includes construction of four commercial driveway connections, street lighting, sidewalks and improved stormwater facilities; and that the Project is consistent with the powers and purposes of County government..

WHEREAS, it further appearing to the Board that the Project has been developed from the approved engineering design plans and reviewed by County Staff; and

WHEREAS, it further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury; and,

WHEREAS, it further appearing to the Board that the acquisition of rights of way and easements described in Exhibit "A" is a necessary part of the Project; and,

WHEREAS, it further appearing that the Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or eminent domain proceedings.

NOW, THEREFORE, the Clackamas County Board of Commissioners hereby resolve:

1) That this Board declares it necessary and in the public interest that the Development Agency, in connection with this Project, immediately begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such acquisition, for the necessary rights of way and easements, either through negotiation, agreement and purchase, or, if necessary, by commencement of eminent domain proceedings.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

A Resolution Related to the SE Capps Road Terminus
Project Declaring the Necessity and Purpose
for Acquisition of Rights of Way, Easements,
and Fee Property and Authorizing Negotiations
and Eminent Domain Actions

Resolution No. _____
(Page 2 of 2)

2) The Clackamas County Development Agency be authorized to, in good faith, attempt to negotiate agreements of just compensation with owners of affected property identified as necessary within the boundaries of Exhibit "A". In so doing, the department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to fairly determine the amount of just compensation owed; and,

3) It is the intention of the Board that the necessary required rights of way and easements be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Manager shall inform the Board when the Manager deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints in condemnation and take such other steps as it determines necessary for the immediate possession of required rights of way and easements and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this _____ day of _____, 2019.

CLACKAMAS County Board of Commissioners
Acting as the Governing Body of the Clackamas County Development Agency

Jim Bernard, Chair

Mary Raethke, Recording Secretary



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

May 9, 2019

Development Agency Board
Board of County Commissioners
Clackamas County

Members of the Board:

Execution of an Assignment, Assumption, Consent and Amendment to Disposition Agreement, and Authorization to Execute a Post-Closing Escrow and Development Agreement and an Escrow Holdback Agreement for Property Located at
11627 SE Capps Road – Clackamas Industrial Area

Purpose/Outcomes	Execute and approve agreements to facilitate the sale of a portion of the CIAO site
Dollar Amount and Fiscal Impact	Amended purchase price: \$3,396,802
Funding Source	N/A
Duration	Indefinitely
Previous Board Action	Approval of Disposition Agreement with Bottling Group, LLC on May 24, 2018, with amendments approved on November 20, 2018, January 24, 2019, March 28, 2019 and May 2, 2019.
Counsel Review	Reviewed and approved by Counsel on April 30, 2019
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, 503-742-4322

BACKGROUND:

The Agency has a Disposition Agreement with Bottling Group, LLC associated with the purchase of a portion of the Clackamas Industrial Area Opportunity (CIAO) site. The Agency and Bottling Group have been working to finalize the property transaction, which was first approved by the Board on May 24, 2018.

Since that time, the parties have solidified the final development plan consistent with the terms of the Disposition Agreement. The final configuration of the proposed development required the acquisition of additional land from adjacent property owners, one of which is Water

Environment Services. These acquisitions also helped to clear up certain encroachments affecting the sale parcel. The Board approved of these separate acquisitions on April 4, 2019 and April 25, 2019.

Additionally, as development plans evolved, it became clear that the buyer was better suited to complete certain improvements given the timelines associated with closing, and the efficiencies of having its contractor complete the necessary work in conjunction with the remainder of the development activities. In exchange for relieving the Development Agency of the obligation to complete improvements associated with the land swap and its Capps Road terminus project, staff is recommending a reduction in the purchase price in an amount that represents the anticipated costs of this work. Specifically, the Agency would provide credits for the following: \$3,896 for construction of a temporary access road, \$53,696 for construction of a gravel parking lot related to the land swap, \$69,606 for entry improvements related to the terminus project, and \$31,000 to reflect the reduction in the amount of square footage being acquired as a result of the terminus project. Staff also recommends that a separate escrow account be established to provide funds from which the buyer could draw from to pay costs incurred by the buyer in removing unsuitable soil from the sale parcel, which was discovered during the due diligence period. The proposed amount of the escrow account would be \$258,300, which is a conservative estimate that assumes the maximum amount of soil needing removal. The escrow agent would be authorized to release any portion of these funds only upon review and approval of invoices by the Development Agency. The proposals discussed in this paragraph would be captured in a separate agreement, which has been attached to this report.

In addition to the credit and escrow account mentioned above, the Assignment, Assumption, Consent and Amendment to Disposition Agreement would memorialize the Agency's consent to an assignment of the Disposition Agreement. Bottling Group, LLC was an entity formed for the purpose of acquiring the sale parcel. The Development Agency has known from the beginning that the planned use for this site is a future distribution facility for Pepsi products. To that end, Bottling Group, LLC is proposing to transfer its interest in the Disposition Agreement to SPDC Industrial Center I, LLC, which will be the final purchaser of the property. SPDC Industrial Center I, LLC will then lease the land back to Bottling Group, LLC, which will be the entity responsible for the operations on the site. Under the terms of the Disposition Agreement, the Development Agency is required to consent to the assignment of the Disposition Agreement, which will allow SPDC Industrial Center I, LLC, and Bottling Group, LLC to assume the responsibilities for the property acquisition and operations as described above.

Attached to this report are two additional agreements: a post-closing escrow and development agreement, and an escrow holdback agreement. A form of the post-closing escrow and development agreement was approved as part of the Disposition Agreement approval in 2018. Amendments to this agreement are necessary to acknowledge the arrangement discussed above between SPDC Industrial Center I, LLC, as the future property owner, and Bottling Group, LLC as the operating tenant entity. The escrow holdback agreement is necessary to be able to direct the escrow officer how to hold and distribute the \$258,300 that would be placed in an escrow account in connection with the removal and remediation of any contaminated soil on

the property. Since these agreements would not be signed until closing, staff is seeking the Board's approval for staff to execute these agreements in connection with closing.

RECOMMENDATION:

Staff recommends the Board do the following:

- 1) Execute the Assignment, Assumption, Consent and Amendment to Disposition Agreement with Bottling Group, LLC, SPDC Industrial Center I, LLC, and Pepsico Global Real Estate, Inc.;
- 2) Authorize staff to execute, at closing, the Post-Closing Escrow and Development Agreement with Bottling Group, LLC and SPDC Industrial Center I, LLC; and
- 3) Authorize staff to execute, at closing, the Escrow Holdback Agreement with SPDC Industrial Center I, LLC.

Respectfully submitted,

David Queener
Development Agency Program Supervisor

Attachments;
Assignment, Assumption, Consent and Amendment to Disposition Agreement
Post-Closing Escrow and Development Agreement
Escrow Holdback Agreement

ASSIGNMENT, ASSUMPTION, CONSENT AND AMENDMENT TO DISPOSITION AGREEMENT

THIS ASSIGNMENT, ASSUMPTION, CONSENT AND AMENDMENT TO DISPOSITION AGREEMENT (this "**Agreement**") is made as of May __, 2019 (the "**Effective Date**"), among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), **BOTTLING GROUP, LLC**, a Delaware limited liability company ("**Assignor**"), **PEPSICO GLOBAL REAL ESTATE, INC.**, a Delaware corporation ("**Tenant**"), and **SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company ("**Assignee**").

RECITALS

A. Agency and Assignor are parties to a certain Disposition Agreement dated as of May 24, 2018 and amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019 (as so amended, the "**Disposition Agreement**"), which provides for, *inter alia*, Agency's conveyance of certain Property to Assignor, as Developer, and the development and use of such Property pursuant to the Disposition Agreement for the purposes and upon the terms and conditions set forth in the Disposition Agreement and in the Post-Closing Agreement annexed to and made a part of the Disposition Agreement (the "**Post-Closing Agreement**"). All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Disposition Agreement.

B. The Disposition Agreement provides Assignor the right to assign its duties and obligations, as Developer, under the Disposition Agreement to a third party upon the written consent of Agency.

C. Assignor desires to so assign the Disposition Agreement to Assignee and Assignee desires to assume the Disposition Agreement from Assignor, following which Assignee shall (i) become the Developer of the Property, (ii) construct certain improvements (the "**Improvements**") in accordance with the Disposition Agreement and the Post-Closing Agreement, and (iii) lease the Property and the completed Improvements to Tenant pursuant to a lease between Developer and Tenant (the "**Lease**") to be used in accordance with the Disposition Agreement and the Post-Closing Agreement. At or immediately after the Closing, Tenant will assign its rights and obligations as tenant under the Lease to Assignor and Assignor will assume such rights and obligations but Tenant will not be released from any of its obligations under the Lease.

D. The Disposition Agreement contemplated the Agency would complete a land swap (the "**Swap**") with one or more adjacent property owners in order to provide a parcel of property sufficient to accommodate Tenant's proposed use of the Property. The Swap is now complete and the parties are entering into this Agreement for the purposes set forth herein.

AGREEMENT

In consideration of the mutual covenants in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Subject to all terms and conditions of this Agreement, Assignor assigns to Assignee, as of the Effective Date, all of Assignor's right, title and interest in, to and under the Disposition Agreement (the "**Assignment**"). Assignor represents and warrants to Assignee that Assignor is the current holder of all of the rights of the Developer under the Disposition Agreement and Assignor has not assigned any of its rights or obligations to any other person or entity.

2. Assumption. Subject to all terms and conditions of this Agreement, Assignee assumes, as of the Effective Date, and agrees to perform all of the obligations of Assignor under the Disposition Agreement and the agreements annexed to and made a part thereof (including, without limitation, the Post-Closing Agreement), and to hold Assignor harmless from any liability or claim arising from Assignee's breach of any obligation so assumed (the "**Assumption**").

3. Consent to Assignment and Assumption. Agency hereby approves and consents to the Assignment and the Assumption, subject to the execution of this Agreement. Accordingly, upon the full execution and delivery of this Agreement, Agency shall be authorized to treat Assignee as Developer under the Disposition Agreement, and shall be entitled to rely on this Agreement in closing with the Assignee pursuant to the Disposition Agreement.

4. Lease. Simultaneously with the execution of this Agreement, Assignee and Tenant have entered into the Lease. Pursuant to the Lease, Tenant is solely responsible for the performance of the obligations of the "Developer" under Section 1.2 and 1.3 of the Post-Closing Agreement.

5. Amendments to Disposition Agreement. The parties agree the Disposition Agreement is amended as follows:

(a) The Agency has provided Assignee and Assignor with a Preliminary Commitment for Title Insurance for the Property issued by Title Company dated _____, 2019, Order No. _____ (the "**Preliminary Commitment**") and a survey of the Property prepared by _____, dated _____ (the "**Initial Survey**"). Sections 2.1 and 2.2 of the Disposition Agreement are hereby amended to provide that Assignee shall have fourteen (14) days from the Effective Date to provide the Agency with written notice of the Unacceptable Exceptions and the Objections to the Survey. All other time periods in Sections 2.1 and 2.2 of the Disposition Agreement shall remain unchanged.

(b) Section 3.1 of the Disposition Agreement is hereby amended to provide that the purchase price for the Property shall be \$3,396,802. The purchase price reflects credits for the following: \$3,896 for construction of a temporary access road, \$53,696 for construction of a gravel parking lot related to the Swap, \$69,606 for entry improvements related to the land swap, and \$31,000 to reflect square footage needed for cul-de-sac improvements.

(c) Section 3.3 of the Disposition Agreement is hereby amended to provide that the closing date shall be fifteen (15) business days after any title or survey objections are resolved pursuant to the terms of Sections 2.1 and 2.2 of the Disposition Agreement, or such earlier date as may be agreed to by the parties.

(d) At the Closing, the sum of \$258,300 of the net sales proceeds payable to the Agency shall be held back and deposited into an escrow account established with Title Company (the "**Holdback**") pursuant to an escrow holdback agreement to be executed by Assignee, the Agency and Title Company at Closing in the form of Exhibit F attached (the "**Holdback Agreement**"). Subject to the terms of the Holdback Agreement, Assignee may receive disbursements from the Holdback to pay costs incurred by Assignee in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property.

(e) The Property Map attached to the Disposition Agreement as Exhibit A is hereby replaced by the Property Map attached to this Agreement as Exhibit A.

(f) The legal description of the Property attached to the Disposition Agreement as Exhibit B is hereby replaced by the legal description attached to this Agreement as Exhibit B.

(g) The Scope of Development attached to the Disposition Agreement as Exhibit E and to be attached to the Post-Closing Agreement as Exhibit A are hereby replaced by the Scope of Development attached to this Agreement as Exhibit C.

(h) The form of the Post-Closing Agreement attached to the Disposition Agreement as Exhibit C is hereby replaced by the form of the Post-Closing Agreement attached to this Agreement as Exhibit D.

6. Due Diligence Period. The Due Diligence Period has expired and Assignor and Assignee hereby confirm that the termination right in favor of Developer pursuant to Section 2.4 of the Disposition Agreement has been waived.

7. Earnest Money. Not more than two (2) business days after the full execution of this Agreement, Assignee will deposit the Earnest Money Funds in the amount of \$100,000 with Title Company as provided for in Section 3.2 of the Disposition Agreement. Upon the deposit of Earnest Money Funds, the Earnest Money Note shall be cancelled and returned to Assignor.

8. Assignment of Design Drawings and Contracts. On the date of the Closing, Assignor and Tenant will assign to Assignee all of their respective rights and interests in and to (a) the Design Drawings and any other plans related to the Improvements, and (b) all agreements and contracts with architects and engineers related to the design of the Improvements.

9. Agency Representations and Warranties. Agency hereby represents and warrants to Assignor, Assignee and Tenant as follows:

(a) The Disposition Agreement sets forth the entire agreement between Assignor and Agency, is in full force and effect in accordance with its terms, and has not, in any way, been assigned, supplemented, amended or modified except as described in this Agreement.

(b) There exists no default by either party to the Disposition Agreement, nor, to the knowledge of the Agency, any state of facts which, with the giving of notice, the passage of time, or both, would constitute a default on any such other grounds.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without giving effect to the conflicts of law provisions thereof, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. Notices. All notices given pursuant to this Agreement or the Disposition Agreement shall be in writing sent to the addresses set forth below and to the attention of the person indicated, and shall be either: (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, (ii) delivered in person or by local or national courier, or sent by electronic mail.

To Agency: Clackamas County Development Agency
c/o Development Agency Program Supervisor
150 Beaver Creek Road
Oregon City, Oregon 97045
Attn: Dave Queener
Email: DavidQue@co.clackamas.us

To Assignor or Tenant: Bottling Group, LLC
c/o PepsiCo Global Real Estate
1111 Westchester Avenue
White Plains, New York 10604
Attn: Director of Real Estate
Email: martyn.wallace1@pepsico.com

With a copy to

Levine & Levine, PLLC
2 Jefferson Plaza
Poughkeepsie, New York 12601
Attn: Dale J. Lois, Esq.
Email: dale@levinelevinelaw.com

To Assignee: SPDC Industrial Center 1 LLC
c/o Security Properties, Inc.
701 Fifth Avenue, Suite 5700
Seattle, Washington 98104
Attention: John Marasco
Email: johnm@secprop.com

With a copy to

Alston, Courtnage & Bassetti LLP
1420 Fifth Avenue, Suite 3650
Seattle, Washington 98101-4011
Attention: Andrew B. Bassetti
Email: abasse@alcourt.com

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

13. Amendments. This Agreement may not be modified, amended or otherwise changed except by written instrument signed by the parties sought to be bound.

14. Attorneys' Fees. The parties shall bear their own costs and attorneys' fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

15. Facsimile and Electronic Signatures. Each party (a) has agreed to permit the use, from time to time, of signatures sent via electronic mail in PDF format, in order to expedite the execution of this Agreement, (b) intends to be bound by its signature sent via electronic mail, (c) is aware that the other party will rely on its signature sent via electronic mail, and (d) acknowledges such reliance and waives any defenses to the enforcement of this Agreement based on the fact that a signature was sent via electronic mail.

16. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, express or implied, and all negotiations or discussions of the parties, whether oral or written, and there are no warranties, representations or agreements among the parties in connection with the subject matter hereof except as set forth herein. Email

communications between the parties shall not be binding or deemed an offer, as no documents are binding unless and until executed. If any of the terms or provisions of this Agreement conflict with any of the terms or provisions of the Disposition Agreement or the Post-Closing Agreement, this Agreement shall control.

17. Exhibits. The following exhibits are attached to and a part of this Agreement:

- Exhibit A – Property Map
- Exhibit B – Legal Description
- Exhibit C – Scope of Development
- Exhibit D – Post-Closing Agreement
- Exhibit E – Form of Holdback Agreement

[signatures appear on following page]

IN WITNESS WHEREOF, Agency, Assignor, Tenant and Assignee have caused this Agreement to be executed as of the date first above written.

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY

By: _____
Name: _____
Title: Chair

ASSIGNOR:

BOTTLING GROUP, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: Director of Real Estate

TENANT:

PEPSICO GLOBAL REAL ESTATE, INC.,
a Delaware corporation

By: _____
Name: _____
Title: Director of Real Estate

ASSIGNEE:

SPDC INDUSTRIAL CENTER 1 LLC, an Oregon limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

PROPERTY MAP

NEW WAREHOUSE AND OFFICE BUILDING

11650 SE CAPPS ROAD
CLACKAMAS COUNTY, OREGON
TAX LOT 01700



SITE VICINITY MAP

N.T.S.

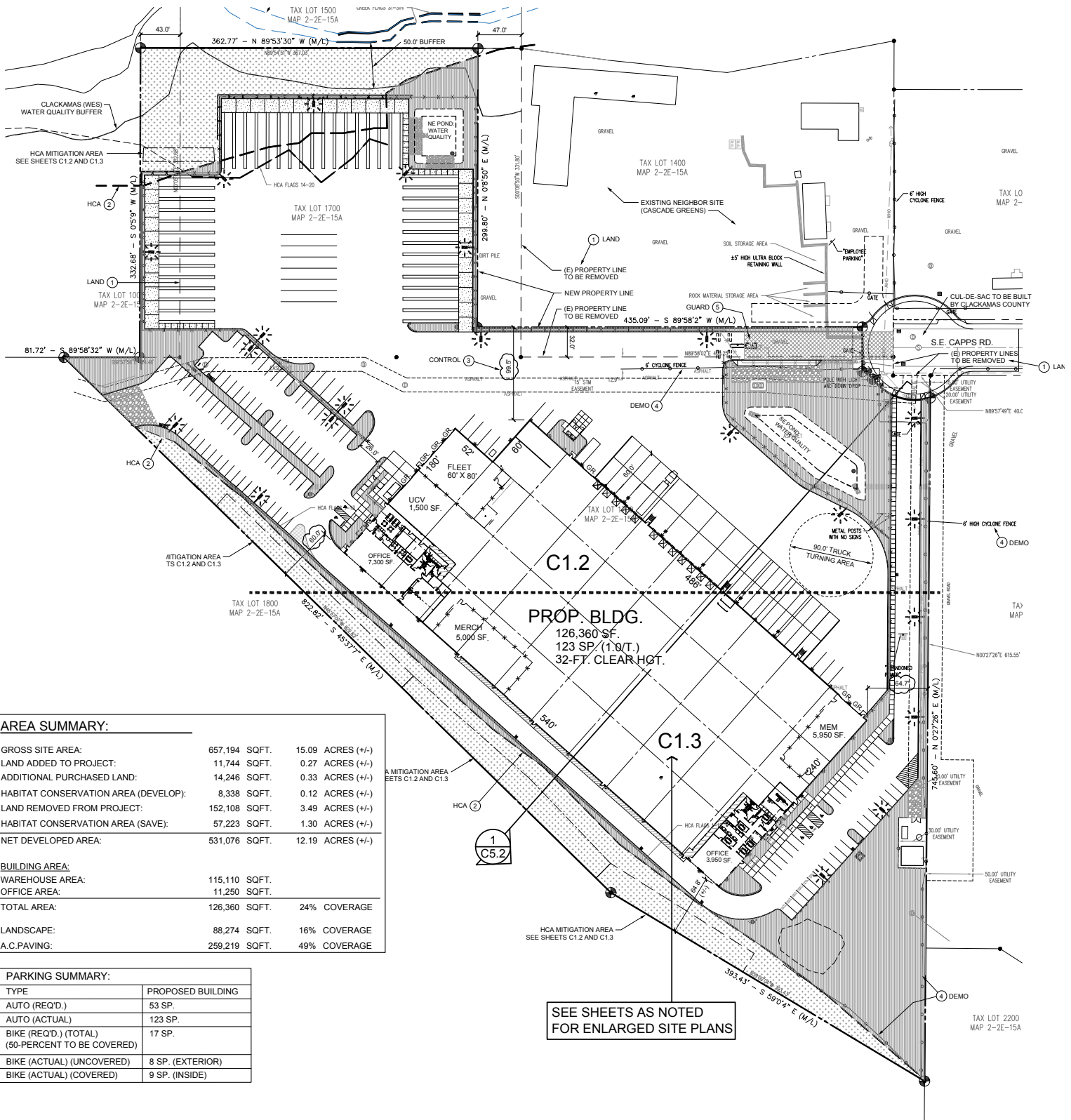
Project Site

EXHIBIT B

Legal Description

EXHIBIT C

SCOPE OF DEVELOPMENT



AREA SUMMARY:

GROSS SITE AREA:	657,194 SQFT.	15.09 ACRES (+/-)
LAND ADDED TO PROJECT:	11,744 SQFT.	0.27 ACRES (+/-)
ADDITIONAL PURCHASED LAND:	14,246 SQFT.	0.33 ACRES (+/-)
HABITAT CONSERVATION AREA (DEVELOP):	8,338 SQFT.	0.12 ACRES (+/-)
LAND REMOVED FROM PROJECT:	152,108 SQFT.	3.49 ACRES (+/-)
HABITAT CONSERVATION AREA (SAVE):	57,223 SQFT.	1.30 ACRES (+/-)
NET DEVELOPED AREA:	531,076 SQFT.	12.19 ACRES (+/-)
BUILDING AREA:		
WAREHOUSE AREA:	115,110 SQFT.	
OFFICE AREA:	11,250 SQFT.	
TOTAL AREA:	126,360 SQFT.	24% COVERAGE
LANDSCAPE:	88,274 SQFT.	16% COVERAGE
A.C.PAVING:	259,219 SQFT.	49% COVERAGE

PARKING SUMMARY:

TYPE	PROPOSED BUILDING
AUTO (REQ'D.)	53 SP.
AUTO (ACTUAL)	123 SP.
BIKE (REQ'D.) (TOTAL) (50-PERCENT TO BE COVERED)	17 SP.
BIKE (ACTUAL) (UNCOVERED)	8 SP. (EXTERIOR)
BIKE (ACTUAL) (COVERED)	9 SP. (INSIDE)

SEE SHEETS AS NOTED FOR ENLARGED SITE PLANS

EXHIBIT D

POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

THIS POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into as of _____, 2019 (the "**Effective Date**"), by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), **BOTTLING GROUP, LLC**, a Delaware limited liability company ("**Tenant**"), **SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company ("**Developer**"), and **CHICAGO TITLE INSURANCE COMPANY OF OREGON** ("**Escrow Holder**").

RECITALS

A. Pursuant to that Disposition Agreement dated as of May 24, 2018, as amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019, and by an Assignment, Assumption, Consent and Amendment to Disposition Agreement dated as of May 9, 2019 (as amended, the "**DA**"), Developer acquired from Agency that certain real property located on Capps Road west of SE 120th Avenue in Clackamas County, Oregon, as more particularly described in Exhibit A attached (the "**Property**"). All capitalized terms used in this Agreement and not otherwise defined herein shall have their meaning as set forth in the DA.

B. In connection with the DA and in furtherance of the Plan, Agency desires that Developer construct the Building Improvements (defined below), and Developer wishes to do so, on and subject to the terms and conditions of this Agreement. As used herein, the "**Building Improvements**" means the industrial building and associated improvements on the Property as described in Exhibit B, attached hereto.

C. In addition, the parties desire to establish at Closing an escrow account (the "**Account**") in the total amount of One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) (the "**Funds**"), payable at Closing by the developer, to be held by the Escrow Holder as security for satisfaction of the obligation of the Developer to complete the Development Goals, as provided herein.

D. Escrow Holder has agreed to serve as the escrow agent for the Account and to disburse the amounts deposited with it in accordance with the terms of this Agreement.

AGREEMENT

1. **Development Goals.** Subject to the terms and conditions of this Agreement, Developer will pursue satisfaction of the following development goals relating to the development of the Property (collectively, the "**Development Goals**") within the specified time periods:

1.1 **Building Improvements; Floor Area Ratio Goal.** Subject to the terms and conditions of this Agreement, Developer will pursue Substantial Completion of the Building Improvements in accordance with and within the limitations specified in Exhibit B, "Scope of Development," attached hereto and made a part hereof, within twenty-four (24) months after the Effective Date. As used in this Agreement, "**Substantial Completion**" of a work or improvement shall mean that (i) the applicable work or improvement has been completed to the point that it can be used for its intended purpose and the only incomplete items are minor or insubstantial details typically found in a so-called "punch list", and (ii) the final governmental permit or approval (as applicable) has been received with respect to such work or improvement. The Developer agrees, at its own cost and expense, to install or construct, or cause to be installed or constructed, the required Building Improvements in accordance with the terms of this Agreement and with all applicable specifications, standards, codes and requirements, including those of the County and the State of Oregon. The Building Improvements shall provide a floor area ratio of not less than .23 or as agreed by Agency and Developer based on reasonable standards relating to the building size layout.

The goal under this Section 1.1 shall be deemed met upon Substantial Completion of the Building Improvements providing the floor area ratio in accordance with the foregoing.

1.2 **Job Quantity.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, Tenant shall meet its employment goal of 135 "Full-time" employees (the "**Job Quantity**"). A Full-time employee is defined as one whose position is permanent and who works a minimum of 35 hours per week, or a combination of permanent employees who together work a minimum of 35 hours per week. To be counted as a Full-time employee, the employee must be: employed by Tenant, active and paid through the normal payroll system of the employer, for whom Federal Insurance Contribution Act ("**FICA**"), and federal and state income taxes are deducted from his or her gross wages and then forwarded to the appropriate agencies by employer on behalf of the worker, as to whom the employer pays federal and state unemployment insurance, and as to whom the employer contributes to FICA, and shall not include workers hired through an agency to provide temporary services to employer or workers acting as independent contractors. For purposes of audit, the Agency intends to seek relevant employee information from the Oregon Employment Department. If the Agency is not able to obtain information from the Oregon Employment Department to determine the relevant wages, the Agency may request that Tenant seek such information as provided in Section 1.4 below. The Job Quantity shall be deemed satisfied for the Building Improvements upon the first instance of such employment goal being met at any time during the 12-month period after the Building Improvements are complete and the building is ready to be utilized by the employees of Tenant.

1.3 **Average Annual Wage.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, Tenant's average annual wages for "Full-time" employees shall be a minimum of \$23.00 per hour (the "**Average Annual Wages**"). Average Annual Wages excludes senior executive positions (e.g., CEO, COO, CFO, etc.) and shall be exclusive of benefits. The Average Annual Wage goal shall be deemed satisfied for the Building Improvements upon the first instance of such goal being met at any time during the 12-month period after the Building Improvements are complete and the building is ready to be utilized by the employees of Tenant.

1.4 **Supporting Information.** In the event that Tenant is not the sole occupant of the Building, Developer will use commercially reasonable efforts to include the following provision (or substantially similar provision) in its lease or sale agreement with each tenant of the Building Improvements:

Upon request of [Developer] or [Agency] from time to time during the first twelve (12) months of full occupancy, [Developer and/or tenant of Developer] agrees to certify in writing the total number of Full-time employees and Average Annual Wages of such employees working at the [Premise/Property] as of the date(s) requested.

If any tenant is unwilling to agree to such provision, Developer will use commercially reasonable efforts to obtain such information from the Developer and/or tenant of Developer as it is willing to provide with respect to the above Development Goals. The parties may rely upon such information provided by the occupants of the Building Improvements, together with all other reasonably reliable data and estimates, for purposes of evidencing satisfaction with the Development Goals under Section 1.2 and Section 1.3 above.

2. **Construction Schedule.** Developer shall use commercially reasonable efforts to begin and complete all construction and development of the Building Improvements within the time specified in the Schedule of Performance, specified in Exhibit C attached hereto and made a part hereof, except as otherwise permitted herein.

3. **Governmental Permits.** Before commencement of construction or development of any buildings, structures or other works or improvements in connection with the Building Improvements upon the Property, the Developer shall, at its own expense, secure or cause to be secured, any and all land use,

construction, and other permits which may be required by any governmental agency. The Agency shall cooperate with the Developer and permitting agencies in obtaining the necessary permits.

4. **Term.** The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, end on the date that all funds in the Account have been disbursed in accordance with the terms of this Agreement.

5. **Account.**

5.1 **Appointment.** Agency and Developer appoint Escrow Holder to receive and hold the Funds in the Account for the benefit of Agency and Developer and to disburse the funds in the Account in accordance with the terms of this Agreement. Escrow Holder accepts that appointment.

5.2 **Account Deposit.** On the date hereof, Developer shall deposit the Funds in the Account. Until disbursed as provided herein, all funds in the Account (as may vary from time to time, the "**Account Funds**" or the "**Security Deposit**") shall be held by the Escrow Holder in accordance with the terms of this Agreement.

5.3 **Investment of Funds.** Escrow Holder shall invest the Account Funds in an interest-bearing account fully insured by the Federal Deposit Insurance Corporation. All interest earned on Account Funds shall automatically be added to and become part of the funds in the Account.

5.4 **Disbursement of Account Funds.** Except as otherwise expressly provided in this paragraph, upon Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals set forth above in Section 1, all Funds shall be disbursed to Developer following written request by Developer that is approved in writing by Agency, which approval will not be unreasonably withheld, conditioned or delayed. For purposes of this provision, the Agency's approval is not unreasonably withheld where a tenant or owner of property fails to confirm in writing the total number of employees and average annual wages of employees working at the Property and the Agency cannot otherwise obtain such employee information from the Oregon Employment Department or other reasonably reliable source, for purposes of determining if the Development Goals have been satisfied. The sole condition for disbursement of the Security Deposit to Developer is the Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals set forth above in Section 1. Notwithstanding the foregoing, if the Building Improvements are not substantially completed within twenty-four (24) months after the Effective Date, subject to delays due to force majeure or other causes beyond the reasonable control of Developer, or if Tenant fails to satisfy any of the remaining Development Goals by the deadlines set forth in Section 1.2 or Section 1.3, the entire Security Deposit shall be disbursed to Agency, subject to the written approval of Developer, which approval will not be unreasonably withheld, conditioned or delayed. The sole condition for disbursement of the Security Deposit to Agency is the failure to achieve any of the deadlines associated with the Development Goals set forth in Section 1 by the foregoing deadlines. The Security Deposit shall be disbursed by a single payment, and shall not be paid on a pro rata basis or otherwise disbursed in installments. If the sole reason for the disbursement of the Security Deposit to the Agency is Tenant's failure to comply with Section 1.2 or Section 1.3, Tenant will reimburse Developer for the Security Deposit within ten (10) business days after the Security Deposit is disbursed to the Agency pursuant to this Section 5.4.

5.5 **Disbursements.** Escrow Holder shall disburse to the payee within three (3) business days after receipt of a written request of a party, approved in writing by the other party. With respect to any disbursement request of a party that is subject to the approval of the other party, such approval shall be deemed given if the other party fails to give notice of disapproval to the requesting party within twenty (20) business days of receipt of the request.

5.6 **Termination of Account.** The Account shall be terminated upon disbursement of all Account Funds as provided in this Agreement.

6. **Limitation of Liability.** Notwithstanding any other provision herein, the liability of either party under this Agreement shall be strictly limited solely to a sum equal to the Account Funds as provided by this Agreement. In no event shall either party have any obligations or liability whatsoever with respect to this Agreement in excess of the Account Funds or with respect to any assets of either party (other than the Account Funds). Except solely for either party's right to disbursement of the Account Funds as provided in this Agreement, both parties hereby waive, release, covenant not to sue and forever discharge the other party and its elected officials, officers, directors, shareholders, employees, affiliates, agents, successors and assigns of, for, from and against any and all Claims (defined below) arising from or related to this Agreement, whether such Claims relate to the period before, on or after the Closing Date.

As used herein, "**Claims**" shall mean any and all actual or threatened claims, detriments, rights, remediation, counterclaims, liens, controversies, obligations, agreements, executions, debts, covenants, promises, suits, causes of action, actions, demands, liabilities, losses, damages, assessments, judgments, fines, penalties, threats, sums of money, accounts, costs, expenses, known or unknown, direct or indirect, at law or in equity (including, without limitation, reasonable attorneys' fees and other professional fees of attorneys and professionals selected by Developer), whether incurred in connection with any investigation, non-judicial, quasi-judicial, judicial, mediative, arbitative, or administrative actions or proceedings or otherwise (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings) or in settlement or in any other proceeding and whether or not suit was filed thereon. The provisions of this Section 6 shall survive the expiration or termination of this Agreement.

7. **Escrow Holder.**

7.1 **Duties of Escrow Holder.** Escrow Holder shall act with reasonable diligence in performing its duties hereunder. Agency or Developer may at any time, from time to time, require an accounting of all monies deposited into and remitted from the Account. Within ten (10) days after the end of each calendar quarter, Escrow Holder shall send to Agency and Developer a statement showing all deposits, withdrawals, and interest credits of the Account for the previous calendar quarter, as well as the current balance of the Account.

7.2 **Claims of Escrow Holder.** Escrow Holder shall have no claim against the Account or Account Funds and relinquishes any right or claim it may have against the Account and such Account Funds.

7.3 **Resignation of Escrow Holder.** Escrow Holder may resign as escrow agent hereunder at any time by giving sixty (60) days prior written notice to Agency and Developer. In such event Agency shall select a new escrow agent doing business in the Portland, Oregon metropolitan area, whose selection shall be subject to the reasonable approval of Developer. Promptly after selection of the new escrow agent, Escrow Holder shall transfer over to the new escrow agent all of the funds in the Account and shall be relieved of any duties hereunder arising thereafter except for the obligation to give the reports required hereunder with respect to any prior or current periods. Contemporaneously with such transfer, Escrow Holder shall deliver to Agency and Developer a report showing the amount transferred. The new escrow agent shall execute and deliver an instrument accepting its appointment and the new escrow agent shall be vested with all of the estates, properties, rights, powers and duties of the predecessor escrow agent as if originally named as Escrow Holder.

If Escrow Holder resigns upon written notice as provided for hereinabove and successor escrow agent is not appointed within thirty (30) days after such notice, then Escrow Holder may petition to an

Oregon court of competent jurisdiction to name a successor and agrees to perform its duties hereunder until its successor is named.

7.4 **Instructions to Escrow Holder.** All instructions to Escrow Holder shall be submitted in writing, and signed by an authorized representative of the submitting party, with a simultaneous copy to the other party.

7.5 **Escrow Fees.** Escrow fees shall be shared equally by Developer and the Agency.

8. **Developer Obligations under the Plan.** Pursuant to Section 715 and 745 of the Plan, Tenant and Developer and the Agency agree as follows:

8.1 Tenant and Developer agree the Property shall be used for the purposes designated in the Plan.

8.2 Developer agrees to obtain necessary approvals for the Building Improvements from all federal, state and/or local agencies that may have jurisdiction on the Property and the Building Improvements to be developed thereon.

8.3 Developer agrees the development of the Property shall be in accord with the regulations prescribed in the County's Comprehensive Plan, Zoning and Development Ordinance, and any other applicable local, state or federal laws regulating the development of property.

8.4 Agency acknowledges receipt of a copy of the plans and specifications for construction of the Building Improvements referenced on Exhibit D attached.

8.5 Developer agrees to commence and complete the Building Improvements within the period of time as provided in this Agreement.

8.6 Developer and Tenant each covenants that it will not discriminate against any person or group of persons on account of age, race, color, creed, religion, sex, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property.

8.7 Developer agrees to maintain the Property in a clean, neat and safe condition.

The foregoing covenants shall be binding upon and run for the benefit of the parties hereto and their respective assigns and successors in interest, subject to Section 9.12. In the event the Developer or Tenant or any of their respective lessees, licensees, agents or other occupants, uses the Property in a manner inconsistent with Section 8 of this Agreement, the Agency may bring all appropriate legal and equitable actions.

9. **General Provisions.**

9.1 **Attorneys' Fees.** The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

9.2 **Notice.** All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

Any notice (1) sent by mail in the manner specified in subsection (i) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (2) delivered by

nationally recognized overnight courier shall be deemed served or given on the date delivered or refused (or the next business day if not delivered on a business day), and (3) given by email shall be deemed given on the date sent if sent during business hours of a business day in Portland, Oregon (or the next business day if not so sent). Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

The address of each party to this Agreement for purposes of notice shall be as follows:

Agency: Clackamas County Development Agency
c/o Development Agency Manager
150 Beaver Creek Road
Oregon City, Oregon 97045
Attn: Dave Queener
Email: davidque@co.elackamas.us

Tenant: Bottling Group, LLC
c/o PepsiCo Global Real Estate
1111 Westchester Avenue
White Plains, New York 10604
Attn: Director of Real Estate
Email: martyn.wallace1@pepsico.com

Levine & Levine, PLLC
2 Jefferson Plaza
Poughkeepsie, New York 12601
Attn: Dale J. Lois, Esq.
Email: dale@levinelevinelaw.com

Developer: SPDC Industrial Center 1 LLC
c/o Security Properties, Inc.
701 Fifth Avenue, Suite 5700
Seattle, Washington 98104
Attention: John Marasco
Email: johnm@secprop.com

With a copy to

Alston, Courtnage & Bassetti LLP
1420 Fifth Avenue, Suite 3650
Seattle, Washington 98101-4011
Attention: Andrew B. Bassetti
Email: abasse@alcourt.com

Escrow Holder: Chicago Title Insurance Company of Oregon
1211 SW Fifth Ave., Suite 2130
Portland, Oregon 97204
Attn: Patricia Parsons
Email: Patricia.Parsons@ctt.com

9.3 Nonliability of Officials and Employees. No member, elected official, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest

thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

9.4 **Headings.** Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

9.5 **Time of Essence.** Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by this Agreement, or as the same may be extended by mutual agreement of the parties in writing.

9.6 **Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

9.7 **No Partnership.** Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties to this Agreement.

9.8 **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

9.9 **Non-Integration.** This Agreement supplements the obligations of the parties under the DA, all of which shall be construed to be consistent with one another to the maximum extent possible. The terms and provisions of this Agreement do not modify or otherwise affect the terms and provisions of any other agreement between some or all of the parties hereto. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities of the Agency and the Developer.

9.10 **Further Assurances.** The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

9.11 **Counterparts; Facsimile and Electronic Signatures.** This Agreement may be executed in counterparts. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, or an escrow officer, the parties shall confirm facsimile transmitted signatures by signing an original document.

9.12 **Binding Effect.** Except as otherwise provided herein, no party hereunder shall assign its rights and/or obligations under this Agreement without the consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement is made for the sole benefit of the parties hereto and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement or any right to the funds in the Account. Subject to the terms of this Section 9.12, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns.

9.13 **Force Majeure.**

9.13.1 **Event of Force Majeure.** The time for performing obligations under this Agreement shall be extended, on a day-for-day basis, due to, and a party shall not be liable for, or deemed in breach of this Agreement because of, any failure or omission to timely carry out or observe its obligations under this Agreement, to the extent that such performance is rendered impossible or is materially and demonstrably delayed by any event where the failure to perform or the delay is beyond the reasonable control of, and could not have been reasonably foreseen by, the nonperforming party; provided that such event is not caused by or attributable to the negligence or fault of, or breach of its obligations hereunder by such party, and could not have been avoided by prudent commercial practices (any such event, a "**Force Majeure Event**").

9.13.2 **Notice of Force Majeure Events.** As a condition to claiming a Force Majeure Event, the claiming party shall promptly give the other party a written notice describing the particulars of the Force Majeure Event, of the occurrence of any such Force Majeure Event, including an estimate of the expected duration and the probable impact of the Force Majeure Event on the performance of such party's obligations hereunder. The parties hereto agree to use reasonable efforts to notify each other of potential Force Majeure Events and update each other on developments regarding potential Force Majeure Events.

9.13.3 **Mitigation.** Suspension or extension of a party's obligations or performance under this Agreement due to a Force Majeure Event shall be of no greater scope and no longer duration than is reasonably required by such Force Majeure Event. The party claiming a Force Majeure Event shall have a duty to alleviate and mitigate the cause and effect arising from such Force Majeure Event, and to resume performance of its affected obligations under this Agreement promptly after being able to do so. The burden of proof with respect to a Force Majeure Event shall be on the party claiming the same.

9.14 **Exhibits.** All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

9.15 **Saturday, Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

9.16 **Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

9.17 **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of law provision thereof.

9.18 **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

9.19 **Memorandum of Agreement.** On or about the Effective Date, the parties will execute and deliver a memorandum of this Agreement in mutually acceptable form, which shall be recorded in the official records of Clackamas County, Oregon. This Agreement shall not be recorded. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective assigns and successors in interest. Upon termination of this Agreement, the parties shall execute and record at Developer's expense an instrument in mutually acceptable form evidencing such termination.

[Signatures Start on Next Page]

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

DEVELOPER:

SPDC INDUSTRIAL CENTER 1 LLC, an Oregon limited liability company

By: _____
Name: _____
Title: _____

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: _____
Name: _____
Title: _____

ESCROW HOLDER:

CHICAGO TITLE INSURANCE COMPANY OF OREGON

By: _____
Name: _____
Title: _____

TENANT:

BOTTLING GROUP, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

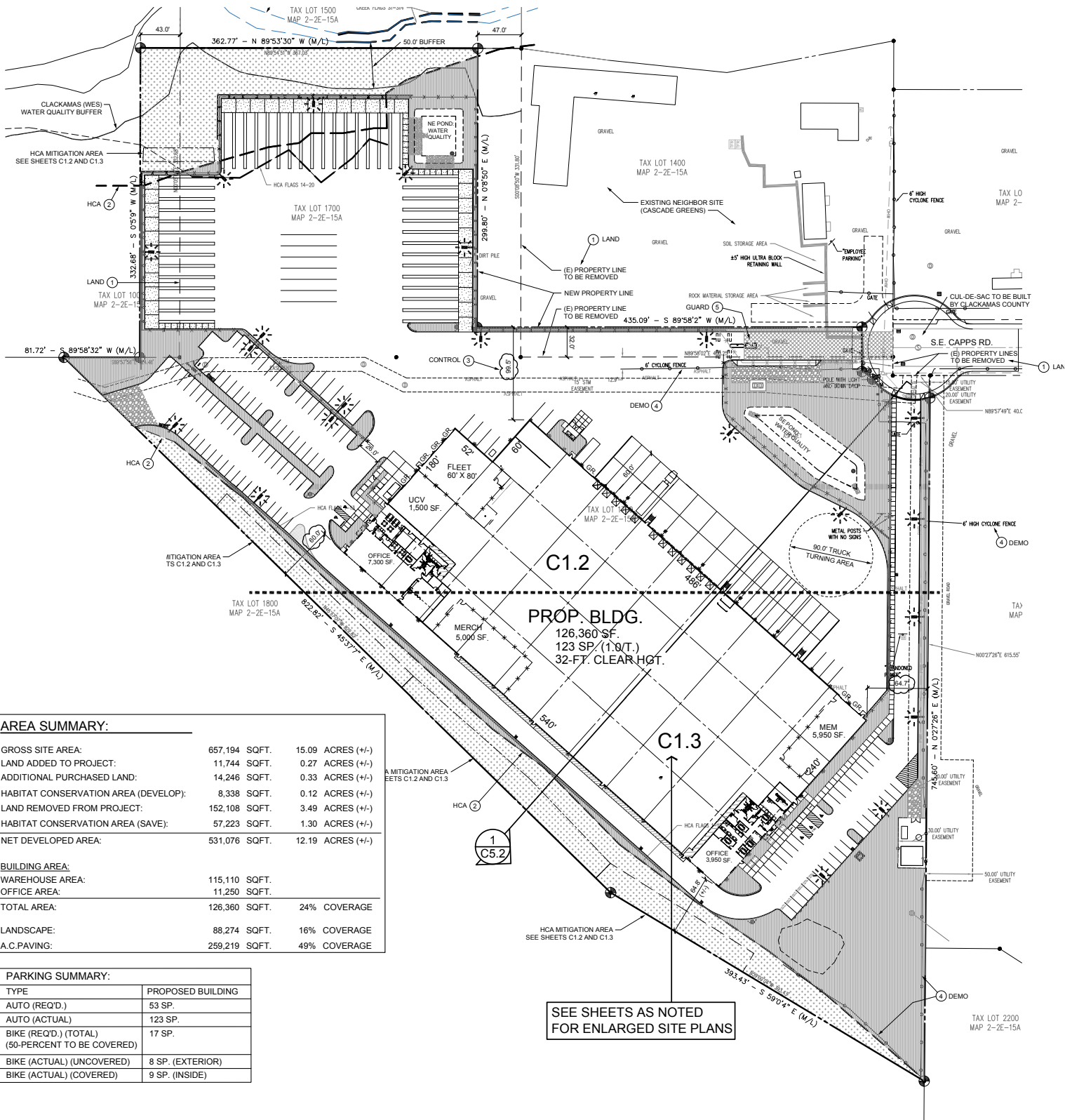
List of Exhibits

- Exhibit A Legal Description of Property
- Exhibit B Scope of Development
- Exhibit C Schedule of Performance
- Exhibit D List of Plans and Specifications for Construction of the Building Improvements

EXHIBIT A TO POST-
CLOSING ESCROW AND
DEVELOPMENT
AGREEMENT

Legal Description of Property

EXHIBIT B TO POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT SCOPE OF DEVELOPMENT



AREA SUMMARY:

GROSS SITE AREA:	657,194 SQFT.	15.09 ACRES (+/-)
LAND ADDED TO PROJECT:	11,744 SQFT.	0.27 ACRES (+/-)
ADDITIONAL PURCHASED LAND:	14,246 SQFT.	0.33 ACRES (+/-)
HABITAT CONSERVATION AREA (DEVELOP):	8,338 SQFT.	0.12 ACRES (+/-)
LAND REMOVED FROM PROJECT:	152,108 SQFT.	3.49 ACRES (+/-)
HABITAT CONSERVATION AREA (SAVE):	57,223 SQFT.	1.30 ACRES (+/-)
NET DEVELOPED AREA:	531,076 SQFT.	12.19 ACRES (+/-)
BUILDING AREA:		
WAREHOUSE AREA:	115,110 SQFT.	
OFFICE AREA:	11,250 SQFT.	
TOTAL AREA:	126,360 SQFT.	24% COVERAGE
LANDSCAPE:	88,274 SQFT.	16% COVERAGE
A.C.PAVING:	259,219 SQFT.	49% COVERAGE

PARKING SUMMARY:

TYPE	PROPOSED BUILDING
AUTO (REQ'D.)	53 SP.
AUTO (ACTUAL)	123 SP.
BIKE (REQ'D.) (TOTAL) (50-PERCENT TO BE COVERED)	17 SP.
BIKE (ACTUAL) (UNCOVERED)	8 SP. (EXTERIOR)
BIKE (ACTUAL) (COVERED)	9 SP. (INSIDE)

SEE SHEETS AS NOTED
FOR ENLARGED SITE PLANS

EXHIBIT C TO POST-CLOSING ESCROW AND
DEVELOPMENT AGREEMENT

SCHEDULE OF PERFORMANCE

Preliminary Design	25 weeks	May 2018 – October 2018
Design Review Approval Process	12 weeks	August 2018 – November 2018
Design Review Appeal Process	9 weeks	December 2018 – February 2019
Final Design	13 weeks	November 2018 – February 2019
Permitting and Bidding	14 weeks	February 2019 – May 2019
Construction	46 weeks	May 2019 – March 2020

EXHIBIT D TO POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

LIST OF PLANS AND SPECIFICATIONS

CVR1.0	Cover Sheet	1/30/19
C1.0	Overall Area Site Plan	1/30/19
C1.1	Master Site Plan	1/30/19
C1.2	Site Plan North	1/30/19
C1.3	Site Plan South	1/30/19
C2.0	Overall Site Grading Plan	1/30/19
C2.1	Site Grading Plan North	1/30/19
C2.2	Site Grading Plan South	1/30/19
C2.3	Grading Details	1/30/19
C3.0	Overall Site Utility Plan	1/30/19
C3.1	Site Utility Plan North	1/30/19
C3.2	Site Utility Plan South	1/30/19
C3.3	Utility Details	1/30/19
C3.4	Utility Details	1/30/19
C3.5	Utility Details	1/30/19
C3.6	Utility Details	1/30/19
C4.0	Erosion and Sediment Control Cover	1/30/19
C4.1	ESC Existing Conditions & Demo Plan	1/30/19
C4.2	Erosion & Sediment Control Plan	1/30/19
C4.3	Erosion & Sediment Control Details	1/30/19
C5.0	Site Details	1/30/19
C5.1	Site Details	1/30/19
C5.2	Site Details	1/30/19
C6.0	Fire Plan	1/30/19
C6.1	Fire Plan Details	1/30/19
1	Topographic Survey	1/30/19
2	Topographic Survey	1/30/19
L1.0	Overall Landscape Plan	1/30/19
L1.1	Landscape Plan North	1/30/19
L1.2	Landscape Plan South	1/30/19
L2.0	Plant Lists	1/30/19
L3.0	Spec and Notes	1/30/19
LT1.0	Site Lighting Plan	1/30/19
A1.0	Overall Floor Plan	1/30/19
A1.1	Partial Floor Plan West	1/30/19
A1.2	Partial Floor Plan East	1/30/19
A1.3	Enlarged Office Floor Plans	1/30/19
A1.4	Door Schedules	1/30/19
A1.5	Door Details/Finish Schedule	1/30/19
A1.6	Wall Types Plan and Details	1/30/19
A2.0	Exterior Elevations	1/30/19
A3.0	Building Sections	1/30/19
A4.0	Wall Sections	1/30/19
A4.1	Wall Sections	1/30/19
A5.0	Roof Plan and Details	1/30/19
A5.1	Roof Details	1/30/19
A6.0	Storefront Plans and Elevations	1/30/19
A7.0	Enlarged Floor Plans	1/30/19
A7.1	Interior Elevations and Details	1/30/19

A7.2	Interior Elevations	1/30/19
A8.0	Architectural Details	1/30/19
A8.1	Architectural Details	1/30/19
A9.0	Reflected Ceiling Plans	1/30/19
A9.1	Reflected Ceiling Details	1/30/19
A10.0	Specifications	1/30/19
A10.1	Specifications	1/30/19
A10.2	Specifications	1/30/19
A10.3	Specifications	1/30/19
A10.4	Specifications	1/30/19
A10.5	Special Inspection Notes	1/30/19
S1.0	Foundation Plan	1/30/19
S2.0	Foundation Details	1/30/19
S2.1	Foundation Details	1/30/19
S3.0	Roof Framing Plan	1/30/19
S4.0	Roof Framing Details	1/30/19
S5.0	Wall Panel Details	1/30/19
S6.0	Wall Panel Elevations	1/30/19
S6.1	Wall Panel Types	1/30/19
S7.0	Canopy Framing Plan and Details	1/30/19

EXHIBIT E

ESCROW HOLDBACK AGREEMENT

THIS ESCROW HOLDBACK AGREEMENT (this "**Agreement**") is entered into as of _____, 2019 (the "**Effective Date**"), by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), **SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company ("**Developer**"), and **CHICAGO TITLE INSURANCE COMPANY OF OREGON** ("**Escrow Holder**").

RECITALS

A. Pursuant to that Disposition Agreement dated as of May 24, 2018, as amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019, and by an Assignment, Assumption, Consent and Amendment to Disposition Agreement dated as of May __, 2019 (as amended, the "**DA**"), Developer acquired from Agency that certain real property located on Capps Road west of SE 120th Avenue in Clackamas County, Oregon, as more particularly described in Exhibit A attached (the "**Property**"). All capitalized terms used in this Agreement and not otherwise defined herein shall have their meaning as set forth in the DA.

B. Pursuant to the DA, at the Closing, the sum of \$258,300 (the "**Funds**") of the net sales proceeds payable to the Agency shall be held back and deposited into an escrow account established with Escrow Holder (the "**Account**") to pay costs incurred by Developer in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property.

C. Escrow Holder has agreed to serve as the escrow agent for the Account and to disburse the amounts deposited with it in accordance with the terms of this Agreement.

AGREEMENT

1. **Term.** The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, end on the date that all funds in the Account have been disbursed in accordance with the terms of this Agreement.

2. **Account.**

2.1 **Appointment.** Agency and Developer appoint Escrow Holder to receive and hold the Funds in the Account for the benefit of Agency and Developer and to disburse the funds in the Account in accordance with the terms of this Agreement. Escrow Holder accepts that appointment.

2.2 **Account Deposit.** On the Effective Date, Agency shall authorize deposit of the Funds in the Account by directing the Escrow Holder to establish the Account with the sum of \$258,300 of the net sales proceeds payable to the Agency. Until disbursed as provided herein, all funds in the Account (as may vary from time to time, the "**Account Funds**") shall be held by the Escrow Holder in accordance with the terms of this Agreement.

2.3 **Investment of Funds.** Escrow Holder shall invest the Account Funds in an interest-bearing account fully insured by the Federal Deposit Insurance Corporation. All interest earned on Account Funds shall automatically be added to and become part of the funds in the Account.

2.4 **Developer Disbursements.** Developer may request up to two (2) disbursements of the Account Funds, but no more than one (1) disbursement will be permitted in any calendar month. Developer may request disbursements to reimburse Developer for any costs incurred by Developer in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the

Property, and the fees of any geotechnical or environmental consultants supervising the work or consulting with Developer with respect to the work. To request a disbursement of the Account Funds, Developer will send a written notice (a "**Disbursement Request**") to the Agency and Escrow Agent which (i) describes the type and dollar cost of the work that has been undertaken or performed and (ii) is accompanied by invoices evidencing Developer's payment for the work for which Developer is seeking reimbursement. Any invoice to be included as part of a Disbursement Request shall, at a minimum, include unit prices and sufficient specificity to allow the Agency to determine how much material has been treated in connection with the work performed. In no event shall Escrow Agent be required to make any determination as to the accuracy of statements in any Disbursement Request delivered pursuant to this Section 2.4. Escrow Agent shall release the Account Funds in the amount, and as directed by Developer in a Disbursement Request, on the tenth (10th) business day following the receipt by Escrow Agent of the Disbursement Request unless prior to the end of such ten (10) business day period the Agency provides Developer and Escrow Holder with written notice that the Agency does not approve the disbursement requested by Developer (an "**Objection Notice**"). Any Objection Notice must state with specificity the reason for the Agency's objection to the requested disbursement of the Account Funds. The Agency agrees not to unreasonably withhold its consent to any disbursement of the Account Funds requested by Developer. If the Agency timely provides Developer and Escrow Agent with an Objection Notice, Escrow Agent shall not release the requested Account Funds until such time as (x) Developer or the Agency has obtained a final, nonappealable determination or judgment from a court of competent jurisdiction specifying whether the Account Funds are to be released, or (y) Escrow Agent has received written directions, jointly signed by Developer and the Agency, specifying the amount and manner in which the Account Funds are to be released. If the Agency issues an Objection Notice, the Agency and Developer will promptly meet and attempt to amicably resolve any dispute regarding the Account Funds.

2.5 **Agency Disbursements.** The Escrow Agent shall release to the Agency any Account Funds that are remaining in the Account on December 31, 2019. The distribution under this section shall be automatic, and shall not require the affirmative request of the Agency, or the consent of the Developer.

2.6 **Termination of Account.** The Account shall be terminated upon disbursement of all Account Funds as provided in this Agreement.

3. **Limitation of Liability.** In no event shall the Agency be liable for any costs associated with removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property, above and beyond the Funds that are deposited into the Account. Notwithstanding any other provision herein, the liability of either party under this Agreement shall be strictly limited solely to a sum equal to the Account Funds as provided by this Agreement. In no event shall either party have any obligations or liability whatsoever with respect to this Agreement in excess of the Account Funds or with respect to any assets of either party (other than the Account Funds). Except solely for either party's right to disbursement of the Account Funds as provided in this Agreement, both parties hereby waive, release, covenant not to sue and forever discharge the other party and its elected officials, officers, directors, shareholders, employees, affiliates, agents, successors and assigns of, for, from and against any and all Claims (defined below) arising from or related to this Agreement, whether such Claims relate to the period before, on or after the Closing Date.

As used herein, "**Claims**" shall mean any and all actual or threatened claims, detriments, rights, remediation, counterclaims, liens, controversies, obligations, agreements, executions, debts, covenants, promises, suits, causes of action, actions, demands, liabilities, losses, damages, assessments, judgments, fines, penalties, threats, sums of money, accounts, costs, expenses, known or unknown, direct or indirect, at law or in equity (including, without limitation, reasonable attorneys' fees and other professional fees of attorneys and professionals selected by Developer), whether incurred in connection with any investigation, non-judicial, quasi-judicial, judicial, mediative, arbitative, or administrative actions or proceedings or

otherwise (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings) or in settlement or in any other proceeding and whether or not suit was filed thereon. The provisions of this Section 3 shall survive the expiration or termination of this Agreement.

4. **Escrow Holder.**

4.1 **Duties of Escrow Holder.** Escrow Holder shall act with reasonable diligence in performing its duties hereunder. Agency or Developer may at any time, from time to time, require an accounting of all monies deposited into and remitted from the Account. Within ten (10) days after the end of each calendar quarter, Escrow Holder shall send to Agency and Developer a statement showing all deposits, withdrawals, and interest credits of the Account for the previous calendar quarter, as well as the current balance of the Account.

4.2 **Claims of Escrow Holder.** Escrow Holder shall have no claim against the Account or Account Funds and relinquishes any right or claim it may have against the Account and such Account Funds.

4.3 **Resignation of Escrow Holder.** Escrow Holder may resign as escrow agent hereunder at any time by giving sixty (60) days prior written notice to Agency and Developer. In such event Agency shall select a new escrow agent doing business in the Portland, Oregon metropolitan area, whose selection shall be subject to the reasonable approval of Developer. Promptly after selection of the new escrow agent, Escrow Holder shall transfer over to the new escrow agent all of the funds in the Account and shall be relieved of any duties hereunder arising thereafter except for the obligation to give the reports required hereunder with respect to any prior or current periods. Contemporaneously with such transfer, Escrow Holder shall deliver to Agency and Developer a report showing the amount transferred. The new escrow agent shall execute and deliver an instrument accepting its appointment and the new escrow agent shall be vested with all of the estates, properties, rights, powers and duties of the predecessor escrow agent as if originally named as Escrow Holder.

If Escrow Holder resigns upon written notice as provided for hereinabove and successor escrow agent is not appointed within thirty (30) days after such notice, then Escrow Holder may petition to an Oregon court of competent jurisdiction to name a successor and agrees to perform its duties hereunder until its successor is named.

4.4 **Instructions to Escrow Holder.** All instructions to Escrow Holder shall be submitted in writing, and signed by an authorized representative of the submitting party, with a simultaneous copy to the other party.

4.5 **Escrow Fees.** Escrow fees shall be shared equally by Developer and the Agency.

5. **General Provisions.**

5.1 **Attorneys' Fees.** The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

5.2 **Notice.** All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email. Any notice (1) sent by mail in the manner specified in subsection (i) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (2) delivered by nationally recognized overnight courier shall be deemed served or given on the date delivered or refused (or the next business day if not delivered on a business day), and (3) given by email shall be deemed given on the date

sent if sent during business hours of a business day in Portland, Oregon (or the next business day if not so sent). Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

The address of each party to this Agreement for purposes of notice shall be as follows:

Agency: Clackamas County Development Agency
c/o Development Agency Manager
150 Beavercreek Road
Oregon City, Oregon 97045
Attn: Dave Queener
Email: davidque@co.clackamas.us

Developer: SPDC Industrial Center 1 LLC
c/o Security Properties, Inc.
701 Fifth Avenue, Suite 5700
Seattle, Washington 98104
Attention: John Marasco
Email: johnm@secprop.com

With a copy to

Alston, Courtlage & Bassetti LLP
1420 Fifth Avenue, Suite 3650
Seattle, Washington 98101-4011
Attention: Andrew B. Bassetti
Email: abasse@alcourt.com

Escrow Holder: Chicago Title Insurance Company of Oregon
1211 SW Fifth Ave., Suite 2130
Portland, Oregon 97204
Attn: Patricia Parsons
Email: Patricia.Parsons@ctt.com

5.3 Nonliability of Officials and Employees. No member, elected official, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

5.4 Headings. Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

5.5 Time of Essence. Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by this Agreement, or as the same may be extended by mutual agreement of the parties in writing.

5.6 Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

5.7 **No Partnership.** Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties to this Agreement.

5.8 **Non-Integration.** The terms and provisions of this Agreement do not modify or otherwise affect the terms and provisions of any other agreement between some or all of the parties hereto. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities of the Agency and the Developer.

5.9 **Further Assurances.** The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

5.10 **Counterparts; Facsimile and Electronic Signatures.** This Agreement may be executed in counterparts. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, or an escrow officer, the parties shall confirm facsimile transmitted signatures by signing an original document.

5.11 **Binding Effect.** Except as otherwise provided herein, no party hereunder shall assign its rights and/or obligations under this Agreement without the consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement is made for the sole benefit of the parties hereto and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement or any right to the funds in the Account. Subject to the terms of this Section 5.11, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns.

5.12 **Exhibits.** All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

5.13 **Saturday, Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

5.14 **Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

5.15 **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of law provision thereof.

5.16 **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

[Signatures Start on Next Page]

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

DEVELOPER:

SPDC INDUSTRIAL CENTER 1 LLC, an Oregon limited liability company

By: _____

Name: _____

Title: _____

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: _____

Name: _____

Title: _____

ESCROW HOLDER:

CHICAGO TITLE INSURANCE COMPANY OF OREGON

By: _____

Name: _____

Title: _____

List of Exhibits
Exhibit A Legal Description of Property

EXHIBIT A TO ESCROW
HOLDBACK AGREEMENT
Legal Description of Property

POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

THIS POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into as of _____, 2019 (the "**Effective Date**"), by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), **BOTTLING GROUP, LLC**, a Delaware limited liability company ("**Tenant**"), **SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company ("**Developer**"), and **CHICAGO TITLE INSURANCE COMPANY OF OREGON** ("**Escrow Holder**").

RECITALS

A. Pursuant to that Disposition Agreement dated as of May 24, 2018, as amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019, and by an Assignment, Assumption, Consent and Amendment to Disposition Agreement dated as of May 9, 2019 (as amended, the "**DA**"), Developer acquired from Agency that certain real property located on Capps Road west of SE 120th Avenue in Clackamas County, Oregon, as more particularly described in Exhibit A attached (the "**Property**"). All capitalized terms used in this Agreement and not otherwise defined herein shall have their meaning as set forth in the DA.

B. In connection with the DA and in furtherance of the Plan, Agency desires that Developer construct the Building Improvements (defined below), and Developer wishes to do so, on and subject to the terms and conditions of this Agreement. As used herein, the "**Building Improvements**" means the industrial building and associated improvements on the Property as described in Exhibit B, attached hereto.

C. In addition, the parties desire to establish at Closing an escrow account (the "**Account**") in the total amount of One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) (the "**Funds**"), payable at Closing by the developer, to be held by the Escrow Holder as security for satisfaction of the obligation of the Developer to complete the Development Goals, as provided herein.

D. Escrow Holder has agreed to serve as the escrow agent for the Account and to disburse the amounts deposited with it in accordance with the terms of this Agreement.

AGREEMENT

1. **Development Goals.** Subject to the terms and conditions of this Agreement, Developer will pursue satisfaction of the following development goals relating to the development of the Property (collectively, the "**Development Goals**") within the specified time periods:

1.1 **Building Improvements; Floor Area Ratio Goal.** Subject to the terms and conditions of this Agreement, Developer will pursue Substantial Completion of the Building Improvements in accordance with and within the limitations specified in Exhibit B, "Scope of Development," attached hereto and made a part hereof, within twenty-four (24) months after the Effective Date. As used in this Agreement, "**Substantial Completion**" of a work or improvement shall mean that (i) the applicable work or improvement has been completed to the point that it can be used for its intended purpose and the only incomplete items are minor or insubstantial details typically found in a so-called "punch list", and (ii) the final governmental permit or approval (as applicable) has been received with respect to such work or improvement. The Developer agrees, at its own cost and expense, to install or construct, or cause to be installed or constructed, the required Building Improvements in accordance with the terms of this Agreement and with all applicable specifications, standards, codes and requirements, including those of the County and the State of Oregon. The Building Improvements shall provide a floor area ratio of not less than .23 or as agreed by Agency and Developer based on reasonable standards relating to the building size layout.

The goal under this Section 1.1 shall be deemed met upon Substantial Completion of the Building Improvements providing the floor area ratio in accordance with the foregoing.

1.2 **Job Quantity.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, Tenant shall meet its employment goal of 135 "Full-time" employees (the "**Job Quantity**"). A Full-time employee is defined as one whose position is permanent and who works a minimum of 35 hours per week, or a combination of permanent employees who together work a minimum of 35 hours per week. To be counted as a Full-time employee, the employee must be: employed by Tenant, active and paid through the normal payroll system of the employer, for whom Federal Insurance Contribution Act ("**FICA**"), and federal and state income taxes are deducted from his or her gross wages and then forwarded to the appropriate agencies by employer on behalf of the worker, as to whom the employer pays federal and state unemployment insurance, and as to whom the employer contributes to FICA, and shall not include workers hired through an agency to provide temporary services to employer or workers acting as independent contractors. For purposes of audit, the Agency intends to seek relevant employee information from the Oregon Employment Department. If the Agency is not able to obtain information from the Oregon Employment Department to determine the relevant wages, the Agency may request that Tenant seek such information as provided in Section 1.4 below. The Job Quantity shall be deemed satisfied for the Building Improvements upon the first instance of such employment goal being met at any time during the 12-month period after the Building Improvements are complete and the building is ready to be utilized by the employees of Tenant.

1.3 **Average Annual Wage.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, Tenant's average annual wages for "Full-time" employees shall be a minimum of \$23.00 per hour (the "**Average Annual Wages**"). Average Annual Wages excludes senior executive positions (e.g., CEO, COO, CFO, etc.) and shall be exclusive of benefits. The Average Annual Wage goal shall be deemed satisfied for the Building Improvements upon the first instance of such goal being met at any time during the 12-month period after the Building Improvements are complete and the building is ready to be utilized by the employees of Tenant.

1.4 **Supporting Information.** In the event that Tenant is not the sole occupant of the Building, Developer will use commercially reasonable efforts to include the following provision (or substantially similar provision) in its lease or sale agreement with each tenant of the Building Improvements:

Upon request of [Developer] or [Agency] from time to time during the first twelve (12) months of full occupancy, [Developer and/or tenant of Developer] agrees to certify in writing the total number of Full-time employees and Average Annual Wages of such employees working at the [Premise/Property] as of the date(s) requested.

If any tenant is unwilling to agree to such provision, Developer will use commercially reasonable efforts to obtain such information from the Developer and/or tenant of Developer as it is willing to provide with respect to the above Development Goals. The parties may rely upon such information provided by the occupants of the Building Improvements, together with all other reasonably reliable data and estimates, for purposes of evidencing satisfaction with the Development Goals under Section 1.2 and Section 1.3 above.

2. **Construction Schedule.** Developer shall use commercially reasonable efforts to begin and complete all construction and development of the Building Improvements within the time specified in the Schedule of Performance, specified in Exhibit C attached hereto and made a part hereof, except as otherwise permitted herein.

3. **Governmental Permits.** Before commencement of construction or development of any buildings, structures or other works or improvements in connection with the Building Improvements upon the Property, the Developer shall, at its own expense, secure or cause to be secured, any and all land use,

construction, and other permits which may be required by any governmental agency. The Agency shall cooperate with the Developer and permitting agencies in obtaining the necessary permits.

4. **Term.** The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, end on the date that all funds in the Account have been disbursed in accordance with the terms of this Agreement.

5. **Account.**

5.1 **Appointment.** Agency and Developer appoint Escrow Holder to receive and hold the Funds in the Account for the benefit of Agency and Developer and to disburse the funds in the Account in accordance with the terms of this Agreement. Escrow Holder accepts that appointment.

5.2 **Account Deposit.** On the date hereof, Developer shall deposit the Funds in the Account. Until disbursed as provided herein, all funds in the Account (as may vary from time to time, the "**Account Funds**" or the "**Security Deposit**") shall be held by the Escrow Holder in accordance with the terms of this Agreement.

5.3 **Investment of Funds.** Escrow Holder shall invest the Account Funds in an interest-bearing account fully insured by the Federal Deposit Insurance Corporation. All interest earned on Account Funds shall automatically be added to and become part of the funds in the Account.

5.4 **Disbursement of Account Funds.** Except as otherwise expressly provided in this paragraph, upon Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals set forth above in Section 1, all Funds shall be disbursed to Developer following written request by Developer that is approved in writing by Agency, which approval will not be unreasonably withheld, conditioned or delayed. For purposes of this provision, the Agency's approval is not unreasonably withheld where a tenant or owner of property fails to confirm in writing the total number of employees and average annual wages of employees working at the Property and the Agency cannot otherwise obtain such employee information from the Oregon Employment Department or other reasonably reliable source, for purposes of determining if the Development Goals have been satisfied. The sole condition for disbursement of the Security Deposit to Developer is the Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals set forth above in Section 1. Notwithstanding the foregoing, if the Building Improvements are not substantially completed within twenty-four (24) months after the Effective Date, subject to delays due to force majeure or other causes beyond the reasonable control of Developer, or if Tenant fails to satisfy any of the remaining Development Goals by the deadlines set forth in Section 1.2 or Section 1.3, the entire Security Deposit shall be disbursed to Agency, subject to the written approval of Developer, which approval will not be unreasonably withheld, conditioned or delayed. The sole condition for disbursement of the Security Deposit to Agency is the failure to achieve any of the deadlines associated with the Development Goals set forth in Section 1 by the foregoing deadlines. The Security Deposit shall be disbursed by a single payment, and shall not be paid on a pro rata basis or otherwise disbursed in installments. If the sole reason for the disbursement of the Security Deposit to the Agency is Tenant's failure to comply with Section 1.2 or Section 1.3, Tenant will reimburse Developer for the Security Deposit within ten (10) business days after the Security Deposit is disbursed to the Agency pursuant to this Section 5.4.

5.5 **Disbursements.** Escrow Holder shall disburse to the payee within three (3) business days after receipt of a written request of a party, approved in writing by the other party. With respect to any disbursement request of a party that is subject to the approval of the other party, such approval shall be deemed given if the other party fails to give notice of disapproval to the requesting party within twenty (20) business days of receipt of the request.

5.6 **Termination of Account.** The Account shall be terminated upon disbursement of all Account Funds as provided in this Agreement.

6. **Limitation of Liability.** Notwithstanding any other provision herein, the liability of either party under this Agreement shall be strictly limited solely to a sum equal to the Account Funds as provided by this Agreement. In no event shall either party have any obligations or liability whatsoever with respect to this Agreement in excess of the Account Funds or with respect to any assets of either party (other than the Account Funds). Except solely for either party's right to disbursement of the Account Funds as provided in this Agreement, both parties hereby waive, release, covenant not to sue and forever discharge the other party and its elected officials, officers, directors, shareholders, employees, affiliates, agents, successors and assigns of, for, from and against any and all Claims (defined below) arising from or related to this Agreement, whether such Claims relate to the period before, on or after the Closing Date.

As used herein, "**Claims**" shall mean any and all actual or threatened claims, detriments, rights, remediation, counterclaims, liens, controversies, obligations, agreements, executions, debts, covenants, promises, suits, causes of action, actions, demands, liabilities, losses, damages, assessments, judgments, fines, penalties, threats, sums of money, accounts, costs, expenses, known or unknown, direct or indirect, at law or in equity (including, without limitation, reasonable attorneys' fees and other professional fees of attorneys and professionals selected by Developer), whether incurred in connection with any investigation, non-judicial, quasi-judicial, judicial, mediative, arbitative, or administrative actions or proceedings or otherwise (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings) or in settlement or in any other proceeding and whether or not suit was filed thereon. The provisions of this Section 6 shall survive the expiration or termination of this Agreement.

7. **Escrow Holder.**

7.1 **Duties of Escrow Holder.** Escrow Holder shall act with reasonable diligence in performing its duties hereunder. Agency or Developer may at any time, from time to time, require an accounting of all monies deposited into and remitted from the Account. Within ten (10) days after the end of each calendar quarter, Escrow Holder shall send to Agency and Developer a statement showing all deposits, withdrawals, and interest credits of the Account for the previous calendar quarter, as well as the current balance of the Account.

7.2 **Claims of Escrow Holder.** Escrow Holder shall have no claim against the Account or Account Funds and relinquishes any right or claim it may have against the Account and such Account Funds.

7.3 **Resignation of Escrow Holder.** Escrow Holder may resign as escrow agent hereunder at any time by giving sixty (60) days prior written notice to Agency and Developer. In such event Agency shall select a new escrow agent doing business in the Portland, Oregon metropolitan area, whose selection shall be subject to the reasonable approval of Developer. Promptly after selection of the new escrow agent, Escrow Holder shall transfer over to the new escrow agent all of the funds in the Account and shall be relieved of any duties hereunder arising thereafter except for the obligation to give the reports required hereunder with respect to any prior or current periods. Contemporaneously with such transfer, Escrow Holder shall deliver to Agency and Developer a report showing the amount transferred. The new escrow agent shall execute and deliver an instrument accepting its appointment and the new escrow agent shall be vested with all of the estates, properties, rights, powers and duties of the predecessor escrow agent as if originally named as Escrow Holder.

If Escrow Holder resigns upon written notice as provided for hereinabove and successor escrow agent is not appointed within thirty (30) days after such notice, then Escrow Holder may petition to an

Oregon court of competent jurisdiction to name a successor and agrees to perform its duties hereunder until its successor is named.

7.4 **Instructions to Escrow Holder.** All instructions to Escrow Holder shall be submitted in writing, and signed by an authorized representative of the submitting party, with a simultaneous copy to the other party.

7.5 **Escrow Fees.** Escrow fees shall be shared equally by Developer and the Agency.

8. **Developer Obligations under the Plan.** Pursuant to Section 715 and 745 of the Plan, Tenant and Developer and the Agency agree as follows:

8.1 Tenant and Developer agree the Property shall be used for the purposes designated in the Plan.

8.2 Developer agrees to obtain necessary approvals for the Building Improvements from all federal, state and/or local agencies that may have jurisdiction on the Property and the Building Improvements to be developed thereon.

8.3 Developer agrees the development of the Property shall be in accord with the regulations prescribed in the County's Comprehensive Plan, Zoning and Development Ordinance, and any other applicable local, state or federal laws regulating the development of property.

8.4 Agency acknowledges receipt of a copy of the plans and specifications for construction of the Building Improvements referenced on Exhibit D attached.

8.5 Developer agrees to commence and complete the Building Improvements within the period of time as provided in this Agreement.

8.6 Developer and Tenant each covenants that it will not discriminate against any person or group of persons on account of age, race, color, creed, religion, sex, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property.

8.7 Developer agrees to maintain the Property in a clean, neat and safe condition.

The foregoing covenants shall be binding upon and run for the benefit of the parties hereto and their respective assigns and successors in interest, subject to Section 9.12. In the event the Developer or Tenant or any of their respective lessees, licensees, agents or other occupants, uses the Property in a manner inconsistent with Section 8 of this Agreement, the Agency may bring all appropriate legal and equitable actions.

9. **General Provisions.**

9.1 **Attorneys' Fees.** The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

9.2 **Notice.** All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

Any notice (1) sent by mail in the manner specified in subsection (i) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (2) delivered by

nationally recognized overnight courier shall be deemed served or given on the date delivered or refused (or the next business day if not delivered on a business day), and (3) given by email shall be deemed given on the date sent if sent during business hours of a business day in Portland, Oregon (or the next business day if not so sent). Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

The address of each party to this Agreement for purposes of notice shall be as follows:

Agency: Clackamas County Development Agency
c/o Development Agency Manager
150 Beaver Creek Road
Oregon City, Oregon 97045
Attn: Dave Queener
Email: davidque@co.elackamas.us

Tenant: Bottling Group, LLC
c/o PepsiCo Global Real Estate
1111 Westchester Avenue
White Plains, New York 10604
Attn: Director of Real Estate
Email: martyn.wallace1@pepsico.com

Levine & Levine, PLLC
2 Jefferson Plaza
Poughkeepsie, New York 12601
Attn: Dale J. Lois, Esq.
Email: dale@levinelevinelaw.com

Developer: SPDC Industrial Center 1 LLC
c/o Security Properties, Inc.
701 Fifth Avenue, Suite 5700
Seattle, Washington 98104
Attention: John Marasco
Email: johnm@secprop.com

With a copy to

Alston, Courtnage & Bassetti LLP
1420 Fifth Avenue, Suite 3650
Seattle, Washington 98101-4011
Attention: Andrew B. Bassetti
Email: abasse@alcourt.com

Escrow Holder: Chicago Title Insurance Company of Oregon
1211 SW Fifth Ave., Suite 2130
Portland, Oregon 97204
Attn: Patricia Parsons
Email: Patricia.Parsons@ctt.com

9.3 Nonliability of Officials and Employees. No member, elected official, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest

thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

9.4 **Headings.** Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

9.5 **Time of Essence.** Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by this Agreement, or as the same may be extended by mutual agreement of the parties in writing.

9.6 **Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

9.7 **No Partnership.** Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties to this Agreement.

9.8 **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

9.9 **Non-Integration.** This Agreement supplements the obligations of the parties under the DA, all of which shall be construed to be consistent with one another to the maximum extent possible. The terms and provisions of this Agreement do not modify or otherwise affect the terms and provisions of any other agreement between some or all of the parties hereto. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities of the Agency and the Developer.

9.10 **Further Assurances.** The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

9.11 **Counterparts; Facsimile and Electronic Signatures.** This Agreement may be executed in counterparts. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, or an escrow officer, the parties shall confirm facsimile transmitted signatures by signing an original document.

9.12 **Binding Effect.** Except as otherwise provided herein, no party hereunder shall assign its rights and/or obligations under this Agreement without the consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement is made for the sole benefit of the parties hereto and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement or any right to the funds in the Account. Subject to the terms of this Section 9.12, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns.

9.13 **Force Majeure.**

9.13.1 **Event of Force Majeure.** The time for performing obligations under this Agreement shall be extended, on a day-for-day basis, due to, and a party shall not be liable for, or deemed in breach of this Agreement because of, any failure or omission to timely carry out or observe its obligations under this Agreement, to the extent that such performance is rendered impossible or is materially and demonstrably delayed by any event where the failure to perform or the delay is beyond the reasonable control of, and could not have been reasonably foreseen by, the nonperforming party; provided that such event is not caused by or attributable to the negligence or fault of, or breach of its obligations hereunder by such party, and could not have been avoided by prudent commercial practices (any such event, a "**Force Majeure Event**").

9.13.2 **Notice of Force Majeure Events.** As a condition to claiming a Force Majeure Event, the claiming party shall promptly give the other party a written notice describing the particulars of the Force Majeure Event, of the occurrence of any such Force Majeure Event, including an estimate of the expected duration and the probable impact of the Force Majeure Event on the performance of such party's obligations hereunder. The parties hereto agree to use reasonable efforts to notify each other of potential Force Majeure Events and update each other on developments regarding potential Force Majeure Events.

9.13.3 **Mitigation.** Suspension or extension of a party's obligations or performance under this Agreement due to a Force Majeure Event shall be of no greater scope and no longer duration than is reasonably required by such Force Majeure Event. The party claiming a Force Majeure Event shall have a duty to alleviate and mitigate the cause and effect arising from such Force Majeure Event, and to resume performance of its affected obligations under this Agreement promptly after being able to do so. The burden of proof with respect to a Force Majeure Event shall be on the party claiming the same.

9.14 **Exhibits.** All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

9.15 **Saturday, Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

9.16 **Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

9.17 **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of law provision thereof.

9.18 **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

9.19 **Memorandum of Agreement.** On or about the Effective Date, the parties will execute and deliver a memorandum of this Agreement in mutually acceptable form, which shall be recorded in the official records of Clackamas County, Oregon. This Agreement shall not be recorded. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective assigns and successors in interest. Upon termination of this Agreement, the parties shall execute and record at Developer's expense an instrument in mutually acceptable form evidencing such termination.

[Signatures Start on Next Page]

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

DEVELOPER:

SPDC INDUSTRIAL CENTER 1 LLC, an Oregon limited liability company

By: _____
Name: _____
Title: _____

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: _____
Name: _____
Title: _____

ESCROW HOLDER:

CHICAGO TITLE INSURANCE COMPANY OF OREGON

By: _____
Name: _____
Title: _____

TENANT:

BOTTLING GROUP, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

List of Exhibits

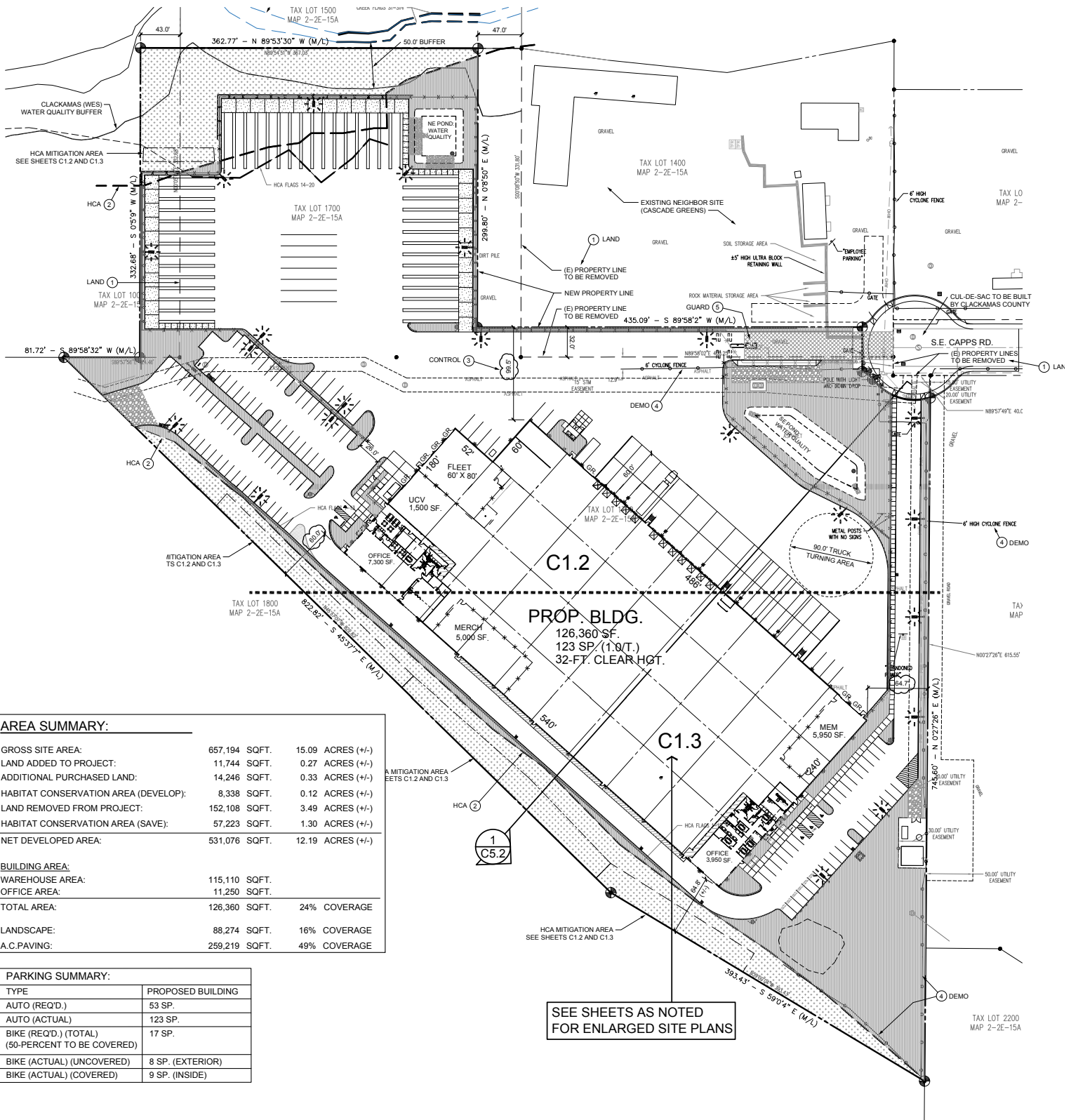
- Exhibit A Legal Description of Property
- Exhibit B Scope of Development
- Exhibit C Schedule of Performance
- Exhibit D List of Plans and Specifications for Construction of the Building Improvements

EXHIBIT A

Legal Description of Property

EXHIBIT B

SCOPE OF DEVELOPMENT



AREA SUMMARY:

GROSS SITE AREA:	657,194 SQFT.	15.09 ACRES (+/-)
LAND ADDED TO PROJECT:	11,744 SQFT.	0.27 ACRES (+/-)
ADDITIONAL PURCHASED LAND:	14,246 SQFT.	0.33 ACRES (+/-)
HABITAT CONSERVATION AREA (DEVELOP):	8,338 SQFT.	0.12 ACRES (+/-)
LAND REMOVED FROM PROJECT:	152,108 SQFT.	3.49 ACRES (+/-)
HABITAT CONSERVATION AREA (SAVE):	57,223 SQFT.	1.30 ACRES (+/-)
NET DEVELOPED AREA:	531,076 SQFT.	12.19 ACRES (+/-)
BUILDING AREA:		
WAREHOUSE AREA:	115,110 SQFT.	
OFFICE AREA:	11,250 SQFT.	
TOTAL AREA:	126,360 SQFT.	24% COVERAGE
LANDSCAPE:	88,274 SQFT.	16% COVERAGE
A.C.PAVING:	259,219 SQFT.	49% COVERAGE

PARKING SUMMARY:

TYPE	PROPOSED BUILDING
AUTO (REQ'D.)	53 SP.
AUTO (ACTUAL)	123 SP.
BIKE (REQ'D.) (TOTAL) (50-PERCENT TO BE COVERED)	17 SP.
BIKE (ACTUAL) (UNCOVERED)	8 SP. (EXTERIOR)
BIKE (ACTUAL) (COVERED)	9 SP. (INSIDE)

SEE SHEETS AS NOTED
FOR ENLARGED SITE PLANS

EXHIBIT C

SCHEDULE OF PERFORMANCE

Preliminary Design	25 weeks	May 2018 – October 2018
Design Review Approval Process	12 weeks	August 2018 – November 2018
Design Review Appeal Process	9 weeks	December 2018 – February 2019
Final Design	13 weeks	November 2018 – February 2019
Permitting and Bidding	14 weeks	February 2019 – May 2019
Construction	46 weeks	May 2019 – March 2020

EXHIBIT D

LIST OF PLANS AND SPECIFICATIONS

CVR1.0	Cover Sheet	1/30/19
C1.0	Overall Area Site Plan	1/30/19
C1.1	Master Site Plan	1/30/19
C1.2	Site Plan North	1/30/19
C1.3	Site Plan South	1/30/19
C2.0	Overall Site Grading Plan	1/30/19
C2.1	Site Grading Plan North	1/30/19
C2.2	Site Grading Plan South	1/30/19
C2.3	Grading Details	1/30/19
C3.0	Overall Site Utility Plan	1/30/19
C3.1	Site Utility Plan North	1/30/19
C3.2	Site Utility Plan South	1/30/19
C3.3	Utility Details	1/30/19
C3.4	Utility Details	1/30/19
C3.5	Utility Details	1/30/19
C3.6	Utility Details	1/30/19
C4.0	Erosion and Sediment Control Cover	1/30/19
C4.1	ESC Existing Conditions & Demo Plan	1/30/19
C4.2	Erosion & Sediment Control Plan	1/30/19
C4.3	Erosion & Sediment Control Details	1/30/19
C5.0	Site Details	1/30/19
C5.1	Site Details	1/30/19
C5.2	Site Details	1/30/19
C6.0	Fire Plan	1/30/19
C6.1	Fire Plan Details	1/30/19
1	Topographic Survey	1/30/19
2	Topographic Survey	1/30/19
L1.0	Overall Landscape Plan	1/30/19
L1.1	Landscape Plan North	1/30/19
L1.2	Landscape Plan South	1/30/19
L2.0	Plant Lists	1/30/19
L3.0	Spec and Notes	1/30/19
LT1.0	Site Lighting Plan	1/30/19
A1.0	Overall Floor Plan	1/30/19
A1.1	Partial Floor Plan West	1/30/19
A1.2	Partial Floor Plan East	1/30/19
A1.3	Enlarged Office Floor Plans	1/30/19
A1.4	Door Schedules	1/30/19
A1.5	Door Details/Finish Schedule	1/30/19
A1.6	Wall Types Plan and Details	1/30/19
A2.0	Exterior Elevations	1/30/19
A3.0	Building Sections	1/30/19
A4.0	Wall Sections	1/30/19
A4.1	Wall Sections	1/30/19
A5.0	Roof Plan and Details	1/30/19
A5.1	Roof Details	1/30/19
A6.0	Storefront Plans and Elevations	1/30/19
A7.0	Enlarged Floor Plans	1/30/19
A7.1	Interior Elevations and Details	1/30/19

A7.2	Interior Elevations	1/30/19
A8.0	Architectural Details	1/30/19
A8.1	Architectural Details	1/30/19
A9.0	Reflected Ceiling Plans	1/30/19
A9.1	Reflected Ceiling Details	1/30/19
A10.0	Specifications	1/30/19
A10.1	Specifications	1/30/19
A10.2	Specifications	1/30/19
A10.3	Specifications	1/30/19
A10.4	Specifications	1/30/19
A10.5	Special Inspection Notes	1/30/19
S1.0	Foundation Plan	1/30/19
S2.0	Foundation Details	1/30/19
S2.1	Foundation Details	1/30/19
S3.0	Roof Framing Plan	1/30/19
S4.0	Roof Framing Details	1/30/19
S5.0	Wall Panel Details	1/30/19
S6.0	Wall Panel Elevations	1/30/19
S6.1	Wall Panel Types	1/30/19
S7.0	Canopy Framing Plan and Details	1/30/19

ESCROW HOLDBACK AGREEMENT

THIS ESCROW HOLDBACK AGREEMENT (this "**Agreement**") is entered into as of _____, 2019 (the "**Effective Date**"), by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), **SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company ("**Developer**"), and **CHICAGO TITLE INSURANCE COMPANY OF OREGON** ("**Escrow Holder**").

RECITALS

A. Pursuant to that Disposition Agreement dated as of May 24, 2018, as amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019, and by an Assignment, Assumption, Consent and Amendment to Disposition Agreement dated as of May __, 2019 (as amended, the "**DA**"), Developer acquired from Agency that certain real property located on Capps Road west of SE 120th Avenue in Clackamas County, Oregon, as more particularly described in Exhibit A attached (the "**Property**"). All capitalized terms used in this Agreement and not otherwise defined herein shall have their meaning as set forth in the DA.

B. Pursuant to the DA, at the Closing, the sum of \$258,300 (the "**Funds**") of the net sales proceeds payable to the Agency shall be held back and deposited into an escrow account established with Escrow Holder (the "**Account**") to pay costs incurred by Developer in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property.

C. Escrow Holder has agreed to serve as the escrow agent for the Account and to disburse the amounts deposited with it in accordance with the terms of this Agreement.

AGREEMENT

1. **Term.** The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, end on the date that all funds in the Account have been disbursed in accordance with the terms of this Agreement.

2. **Account.**

2.1 **Appointment.** Agency and Developer appoint Escrow Holder to receive and hold the Funds in the Account for the benefit of Agency and Developer and to disburse the funds in the Account in accordance with the terms of this Agreement. Escrow Holder accepts that appointment.

2.2 **Account Deposit.** On the Effective Date, Agency shall authorize deposit of the Funds in the Account by directing the Escrow Holder to establish the Account with the sum of \$258,300 of the net sales proceeds payable to the Agency. Until disbursed as provided herein, all funds in the Account (as may vary from time to time, the "**Account Funds**") shall be held by the Escrow Holder in accordance with the terms of this Agreement.

2.3 **Investment of Funds.** Escrow Holder shall invest the Account Funds in an interest-bearing account fully insured by the Federal Deposit Insurance Corporation. All interest earned on Account Funds shall automatically be added to and become part of the funds in the Account.

2.4 **Developer Disbursements.** Developer may request up to two (2) disbursements of the Account Funds, but no more than one (1) disbursement will be permitted in any calendar month. Developer may request disbursements to reimburse Developer for any costs incurred by Developer in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the

Property, and the fees of any geotechnical or environmental consultants supervising the work or consulting with Developer with respect to the work. To request a disbursement of the Account Funds, Developer will send a written notice (a "**Disbursement Request**") to the Agency and Escrow Agent which (i) describes the type and dollar cost of the work that has been undertaken or performed and (ii) is accompanied by invoices evidencing Developer's payment for the work for which Developer is seeking reimbursement. Any invoice to be included as part of a Disbursement Request shall, at a minimum, include unit prices and sufficient specificity to allow the Agency to determine how much material has been treated in connection with the work performed. In no event shall Escrow Agent be required to make any determination as to the accuracy of statements in any Disbursement Request delivered pursuant to this Section 2.4. Escrow Agent shall release the Account Funds in the amount, and as directed by Developer in a Disbursement Request, on the tenth (10th) business day following the receipt by Escrow Agent of the Disbursement Request unless prior to the end of such ten (10) business day period the Agency provides Developer and Escrow Holder with written notice that the Agency does not approve the disbursement requested by Developer (an "**Objection Notice**"). Any Objection Notice must state with specificity the reason for the Agency's objection to the requested disbursement of the Account Funds. The Agency agrees not to unreasonably withhold its consent to any disbursement of the Account Funds requested by Developer. If the Agency timely provides Developer and Escrow Agent with an Objection Notice, Escrow Agent shall not release the requested Account Funds until such time as (x) Developer or the Agency has obtained a final, nonappealable determination or judgment from a court of competent jurisdiction specifying whether the Account Funds are to be released, or (y) Escrow Agent has received written directions, jointly signed by Developer and the Agency, specifying the amount and manner in which the Account Funds are to be released. If the Agency issues an Objection Notice, the Agency and Developer will promptly meet and attempt to amicably resolve any dispute regarding the Account Funds.

2.5 **Agency Disbursements.** The Escrow Agent shall release to the Agency any Account Funds that are remaining in the Account on December 31, 2019. The distribution under this section shall be automatic, and shall not require the affirmative request of the Agency, or the consent of the Developer.

2.6 **Termination of Account.** The Account shall be terminated upon disbursement of all Account Funds as provided in this Agreement.

3. **Limitation of Liability.** In no event shall the Agency be liable for any costs associated with removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property, above and beyond the Funds that are deposited into the Account. Notwithstanding any other provision herein, the liability of either party under this Agreement shall be strictly limited solely to a sum equal to the Account Funds as provided by this Agreement. In no event shall either party have any obligations or liability whatsoever with respect to this Agreement in excess of the Account Funds or with respect to any assets of either party (other than the Account Funds). Except solely for either party's right to disbursement of the Account Funds as provided in this Agreement, both parties hereby waive, release, covenant not to sue and forever discharge the other party and its elected officials, officers, directors, shareholders, employees, affiliates, agents, successors and assigns of, for, from and against any and all Claims (defined below) arising from or related to this Agreement, whether such Claims relate to the period before, on or after the Closing Date.

As used herein, "**Claims**" shall mean any and all actual or threatened claims, detriments, rights, remediation, counterclaims, liens, controversies, obligations, agreements, executions, debts, covenants, promises, suits, causes of action, actions, demands, liabilities, losses, damages, assessments, judgments, fines, penalties, threats, sums of money, accounts, costs, expenses, known or unknown, direct or indirect, at law or in equity (including, without limitation, reasonable attorneys' fees and other professional fees of attorneys and professionals selected by Developer), whether incurred in connection with any investigation, non-judicial, quasi-judicial, judicial, mediative, arbitative, or administrative actions or proceedings or

otherwise (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings) or in settlement or in any other proceeding and whether or not suit was filed thereon. The provisions of this Section 3 shall survive the expiration or termination of this Agreement.

4. **Escrow Holder.**

4.1 **Duties of Escrow Holder.** Escrow Holder shall act with reasonable diligence in performing its duties hereunder. Agency or Developer may at any time, from time to time, require an accounting of all monies deposited into and remitted from the Account. Within ten (10) days after the end of each calendar quarter, Escrow Holder shall send to Agency and Developer a statement showing all deposits, withdrawals, and interest credits of the Account for the previous calendar quarter, as well as the current balance of the Account.

4.2 **Claims of Escrow Holder.** Escrow Holder shall have no claim against the Account or Account Funds and relinquishes any right or claim it may have against the Account and such Account Funds.

4.3 **Resignation of Escrow Holder.** Escrow Holder may resign as escrow agent hereunder at any time by giving sixty (60) days prior written notice to Agency and Developer. In such event Agency shall select a new escrow agent doing business in the Portland, Oregon metropolitan area, whose selection shall be subject to the reasonable approval of Developer. Promptly after selection of the new escrow agent, Escrow Holder shall transfer over to the new escrow agent all of the funds in the Account and shall be relieved of any duties hereunder arising thereafter except for the obligation to give the reports required hereunder with respect to any prior or current periods. Contemporaneously with such transfer, Escrow Holder shall deliver to Agency and Developer a report showing the amount transferred. The new escrow agent shall execute and deliver an instrument accepting its appointment and the new escrow agent shall be vested with all of the estates, properties, rights, powers and duties of the predecessor escrow agent as if originally named as Escrow Holder.

If Escrow Holder resigns upon written notice as provided for hereinabove and successor escrow agent is not appointed within thirty (30) days after such notice, then Escrow Holder may petition to an Oregon court of competent jurisdiction to name a successor and agrees to perform its duties hereunder until its successor is named.

4.4 **Instructions to Escrow Holder.** All instructions to Escrow Holder shall be submitted in writing, and signed by an authorized representative of the submitting party, with a simultaneous copy to the other party.

4.5 **Escrow Fees.** Escrow fees shall be shared equally by Developer and the Agency.

5. **General Provisions.**

5.1 **Attorneys' Fees.** The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

5.2 **Notice.** All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email. Any notice (1) sent by mail in the manner specified in subsection (i) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (2) delivered by nationally recognized overnight courier shall be deemed served or given on the date delivered or refused (or the next business day if not delivered on a business day), and (3) given by email shall be deemed given on the date

sent if sent during business hours of a business day in Portland, Oregon (or the next business day if not so sent). Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

The address of each party to this Agreement for purposes of notice shall be as follows:

Agency: Clackamas County Development Agency
c/o Development Agency Manager
150 Beavercreek Road
Oregon City, Oregon 97045
Attn: Dave Queener
Email: davidque@co.clackamas.us

Developer: SPDC Industrial Center 1 LLC
c/o Security Properties, Inc.
701 Fifth Avenue, Suite 5700
Seattle, Washington 98104
Attention: John Marasco
Email: johnm@secprop.com

With a copy to

Alston, Courtnage & Bassetti LLP
1420 Fifth Avenue, Suite 3650
Seattle, Washington 98101-4011
Attention: Andrew B. Bassetti
Email: abasse@alcourt.com

Escrow Holder: Chicago Title Insurance Company of Oregon
1211 SW Fifth Ave., Suite 2130
Portland, Oregon 97204
Attn: Patricia Parsons
Email: Patricia.Parsons@ctt.com

5.3 **Nonliability of Officials and Employees.** No member, elected official, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

5.4 **Headings.** Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

5.5 **Time of Essence.** Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by this Agreement, or as the same may be extended by mutual agreement of the parties in writing.

5.6 **Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

5.7 **No Partnership.** Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties to this Agreement.

5.8 **Non-Integration.** The terms and provisions of this Agreement do not modify or otherwise affect the terms and provisions of any other agreement between some or all of the parties hereto. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities of the Agency and the Developer.

5.9 **Further Assurances.** The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

5.10 **Counterparts; Facsimile and Electronic Signatures.** This Agreement may be executed in counterparts. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, or an escrow officer, the parties shall confirm facsimile transmitted signatures by signing an original document.

5.11 **Binding Effect.** Except as otherwise provided herein, no party hereunder shall assign its rights and/or obligations under this Agreement without the consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement is made for the sole benefit of the parties hereto and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement or any right to the funds in the Account. Subject to the terms of this Section 5.11, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns.

5.12 **Exhibits.** All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

5.13 **Saturday, Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

5.14 **Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

5.15 **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of law provision thereof.

5.16 **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

[Signatures Start on Next Page]

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

DEVELOPER:

SPDC INDUSTRIAL CENTER 1 LLC, an Oregon limited liability company

By: _____

Name: _____

Title: _____

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: _____

Name: _____

Title: _____

ESCROW HOLDER:

CHICAGO TITLE INSURANCE COMPANY OF OREGON

By: _____

Name: _____

Title: _____

List of Exhibits
Exhibit A Legal Description of Property

EXHIBIT A

Legal Description of Property