



**DAN JOHNSON**  
MANAGER

**DEVELOPMENT AGENCY**

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

February 28, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Commercial Lease with Miles Fiberglass and Composites, Inc.**

<b>Purpose/Outcome</b>	Execute a lease with Miles Fiberglass and Composites, Inc. for Agency owned property located on Otty Road
<b>Dollar Amount and Fiscal Impact</b>	Monthly rent payment of \$20,065.00
<b>Funding Source</b>	N/A.
<b>Duration</b>	Lease will expire on January 1, 2021
<b>Previous Board Action/Review</b>	None
<b>Strategic Plan Alignment</b>	Build public trust through good government
<b>Contact Person</b>	David Queener, Development Agency Program Supervisor, 503-742-4322

The Agency owns property located at 8707 SE Otty Road, which has been leased by Miles Fiberglass since September 2010. Per the terms of the previous lease, both parties can negotiate a renewal or extension.

Miles Fiberglass has agreed to a new lease term that will expire on January 1, 2021. Terms of the lease include monthly rent in the amount of \$20,065.00 and their responsibility for payment of all property taxes. The lease also requires a one hundred eighty (180) day notification by the Agency of its intent to terminate the lease in the event a redevelopment opportunity arises.

County Counsel has reviewed and approved the proposed lease.

## **RECOMMENDATION**

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, execute this lease with Miles Fiberglass and Composites, Inc.

Respectfully submitted,

David Queener, Program Supervisor  
Development Agency

# **COMMERCIAL LEASE**

**8855-8707 SE OTTY ROAD**

**Landlord: Clackamas County  
Development Agency**

**Tenant: Miles Fiberglass &  
Composites, Inc.**

\_\_\_\_\_, 2019

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## COMMERCIAL LEASE

Date: \_\_\_\_\_, 2019

Between: Clackamas County Development Agency (“Landlord”)  
Development Services Building  
150 Beavercreek Road  
Oregon City, OR 97045

And: Miles Fiberglass & Composites, Inc. (“Tenant”)  
8855 SE Otty Road  
Happy Valley, OR 97086

### RECITALS

WHEREAS, Landlord and Tenant executed a lease September 15, 2010, which expired October 1, 2013 (“Previous Lease”); and

WHEREAS, Landlord and Tenant executed an extension to the Previous Lease on December 30, 2013, which will expire on December 31, 2016 (the extension to the Previous Lease, together with the Previous Lease agreement shall be collectively referred to herein as the “Previous Lease”); and

WHEREAS, Landlord and Tenant executed another extension to the Previous Lease on December 22, 2016, which expired on December 31, 2018 (the extension to the Previous Lease, together with the Previous Lease agreement shall be collectively referred to herein as the “Previous Lease”); and

WHEREAS, Tenant desires to continue leasing the Premises, as defined below, and the Landlord desires to continue leasing the Premises to Tenant.

### **Section 1. Property; Term of the Lease**

1.1 Premises. Landlord leases to Tenant, and Tenant leases from Landlord, the premises (the “Premises”) known as 8855-8707 Otty Road in Happy Valley, Oregon, and more completely described in Exhibits A and B.

1.2 Storage Property Option. Tenant has the additional option of leasing the adjoining property, more specifically described as Township 1 South, Range 2 East, Section 28CB Tax Lot 1200 (“Storage Property”).

1.3 Starting Date: Tenant’s rights under the Lease shall continue uninterrupted from the term set forth in the Previous Lease.

1.4 Termination Date: The first event below that occurs shall terminate the Lease.

1.4.1 12:01 a.m. on January 1, 2021. This Lease is not subject to automatic renewal, however Landlord and Tenant reserve the right to subsequently

negotiate its renewal or extension, or other alternative for permitting Tenant to continue its occupancy of the Premises past the termination date set out immediately above.

1.4.2 If Agency obtains an opportunity to develop the Premises, prior to the expiration of the Lease term in 1.4.1, Agency may terminate the Lease upon one hundred and eighty (180) days written notice to Tenant.

1.4.3 Other events as provided in the Lease, specifically default (Sections 14 and 15), damage or destruction of the Premises (Section 10), and condemnation (Section 11).

## **Section 2. Possession and Condition of the Premises.**

2.1 Tenant's right to possession and Landlord's and Tenant's obligations under the Lease shall continue uninterrupted from the term set forth in the Previous Lease.

2.2 Tenant accepts the Premises "as-is" without any warranty or representation by Landlord as to its condition, fitness for any particular purpose, or habitability. Tenant acknowledges that Landlord has no obligation to make any change or improvement to the Premises or pay any cost, expend any sum, or incur any liability to make any change or improvement.

## **Section 3. Rent**

3.1 Rent: Tenant shall pay as rent to Landlord the sum of Twenty Thousand Sixty-Five and 00/100 Dollars (\$20,065.00) per month, payable in advance at the offices of Landlord as set out below in Section 17.5 below. If Tenant elects to rent the Storage Property, the Tenant shall pay additional rent of Six Hundred and 00/100 Dollars (\$600.00) per month.

3.2 Security Deposit: Landlord reaffirms the receipt of, and shall continue to hold Tenant's security deposit of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500).

3.3 Waiver of Relocation Benefits: Tenant recognizes that, while Landlord is a public entity, this transaction will not be subject to any relocation benefits. Tenant is under taking a voluntary relocation at the conclusion of this Lease, or any extension thereof.

## **Section 4. Use of the Premises**

4.1 Permitted Use: The Premises shall be used for the current operations of Tenant's business and for no other purpose without the consent of Landlord, which consent shall not be unreasonably withheld.

4.2 Restrictions on Use: In connection with the use of the Premises, Tenant shall:

4.2.1 Refrain from any activity that would make it impossible to insure the Premises against casualty, and

4.2.2 Conform to all applicable laws and regulations of any public authority affecting the Premises and Tenant's use and correct, at Tenant's own expense,

any failure of compliance created through Tenant's fault or by reason of Tenant's use.

4.2.2.1 Notwithstanding any failure by Landlord to object to any such acts or work by Tenant, its assignees, agents, or contractors, Landlord shall have no responsibility for Tenant's failure to meet all applicable laws, regulations, or requirements.

4.2.2.2 Landlord declares, and Tenant acknowledges, that Landlord is not a law-making or regulatory authority, and that Landlord does not have the ability to initiate, terminate, or affect the outcome of any compliance action a public authority might take against the Premises. Landlord lacks the capacity, through executing this Lease or any other action, to declare that Tenant's present and contemplated future activities on the Premises conform to all applicable laws and regulations of any public authority.

4.2.3 Neither Landlord nor Tenant shall do or suffer any waste to the Premises.

4.3 No Partnership: Landlord is not a partner or joint venturer with Tenant in connection with the business carried on under this Lease, and Landlord shall have no obligation with respect to Tenant's debts or other liabilities, and no interest in Tenant's profits.

4.4 Hazardous Substances: Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of its business. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. On the expiration or termination of this lease, Tenant shall remove all Hazardous Substances from the Premises.

4.4.1 The term "Environmental Law" shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.

4.4.2 The term "Hazardous Substance" shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

4.5 Asbestos: Prior to its possession under the terms of this Lease, Tenant was the owner in possession of the Premises. Landlord relies upon Tenant's assurances that Tenant is knowledgeable as to the presence of any asbestos on the Premises, and that Tenant will take responsibility for any federal, state, regional, or local measures required for asbestos abatement or control during the term of this Lease.

## **Section 5. Repairs and Maintenance**



5.1 Tenant's Obligations: Tenant shall be responsible for all repairs, maintenance, replacements, or improvements on the Premises, except damage caused by fire and other risks covered by fire and extended coverage insurance, and acts of God. Landlord shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements whether they be extraordinary or ordinary.

5.1.1 Standard of work: Tenant, at its exclusive expense, shall keep the Premises in the same condition and repair as the Premises were at the date the Lease was executed.

5.1.2 Abatement: Tenant shall have no right to an abatement of rent or any claim against Landlord for any inconvenience or disturbance resulting from any activities performed in conformance with this provision.

5.2 Reimbursement for Repairs Assumed: If Tenant fails or refuses to make repairs that are required by Section 5.1, Landlord may make the repairs and charge the actual costs of repairs to Tenant.

5.2.1 Tenant shall reimburse such expenditures by Landlord on demand together with interest at the rate of nine percent (9%) per annum from the date of expenditure by Landlord, but if reimbursement is made by Tenant within 30 (thirty) days of demand by Landlord, no interest shall attach.

5.2.2 Except in an emergency creating an immediate risk of personal injury or property damage, Landlord may not perform repairs that are the obligation of the Tenant and charge the Tenant for the resulting expense unless at least 10 (ten) days before work is commenced, the Tenant is given notice in writing outlining with reasonable particularity the repairs required, and Tenant fails within that time to initiate such repairs in good faith and pursue the repairs to completion with due diligence.

5.3 Inspection of Premises: Landlord, with a 10 (ten) day written notice to Tenant, shall have the right to inspect the Premises at any reasonable time or times to determine their general condition and the necessity of any repair. In the event of an emergency Landlord may inspect the Premises without first giving notice.

## **Section 6. Alterations**

6.1 Alterations Prohibited Without Consent: Tenant may make improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent if the total cost of the improvements or alterations does not exceed \$10,000. If the total cost of the improvements or alterations exceeds \$10,000, Tenant must first obtain Landlord's written consent, which may not be unreasonably withheld. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

6.2 Ownership and Removal of Alterations: All improvements and alterations performed on the Premises shall be the property of Landlord when installed, and Tenant shall have no obligation to remove any alteration or improvement; however:

6.2.1 At Landlord's written request, Tenant shall remove improvements and alterations installed by Tenant and restore the Premises to its state as of the date

the Tenant took possession of the Premises under the Previous Lease, unless Landlord had earlier specifically provided otherwise in writing.

6.2.2 Landlord shall be entitled to all heating, electrical, and plumbing fixtures, and Tenant shall be entitled to all its equipment, whether attached to the Premises or not.

## **Section 7. Insurance and Indemnification**

7.1 Insurance: Tenant shall keep the Premises insured at Tenant's expense sufficient to protect the value of the improvements, the income stream attributable to Tenant's business operations, and Tenant's responsibility to indemnify Landlord.

7.1.1 Fire and Casualty: Tenant shall continue to insure the Premises against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall deliver to Landlord a copy of the insurance policy with an endorsement naming the Landlord as an additional insured.

7.1.2 General Liability: Tenant shall obtain and at all times maintain, at its sole cost, a comprehensive commercial general liability insurance policy with a responsible company naming Landlord and Clackamas County, their officers, commissioners, agents, and employees, as insured or additional insureds against liability for any and all claims and suits for damages or injuries to persons or property arising from or arising out of the Premises or the operations thereon. Tenant is not required to insure Landlord and Clackamas County against liability, loss, and costs attributable solely and exclusively to acts or omissions of Landlord and Clackamas County, or Landlord's and Clackamas County's officers, agents, and employees.

7.1.2.1 This comprehensive general liability policy must provide coverage on a current basis for both bodily injury and property damage of not less than \$1,000,000 (one million dollars) for injury to one person, \$3,000,000 (three million dollars) for injury to two or more persons in one occurrence, and \$1,000,000 (one million dollars) for damage to property. The deductible may not exceed \$10,000 (ten thousand dollars) per occurrence.

7.1.2.2 Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the Premises.

7.1.3 All policies of insurance must contain a statement obliging the insurance carrier to notify Landlord of any material change, cancellation, or termination of the coverage at least 30 (thirty) days in advance of the effective date.

7.1.4 All insurance policies provided by Tenant shall be primary insurance and not contributing with any insurance maintained by the Landlord or Clackamas County.

7.1.5 All insurance policies provided by Tenant must contain a waiver of subrogation for the benefit of the Landlord and Clackamas County.

7.1.6 Tenant must give Landlord prompt and timely notice of any claim made or suit arising against the policies.

## 7.2 Indemnification

7.2.1 Tenant shall indemnify and defend Landlord from, and reimburse Landlord for, any cost, claim, loss, or liability suffered by Tenant or from a third-party claim arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant including any such cost, claim, loss, or liability that may be caused or contributed to in whole or in part by Landlord's failure to effect any repair or maintenance required by this Lease including any cost, claim, loss, or liability suffered by Tenant or from a third-party claim for damage to the Premises. Tenant agrees to indemnify and defend Landlord and Clackamas County and their officers, commissioners, agents, and employees against all liability, loss, and costs arising from actions, suits, claims, or demands attributable in whole or in part to the acts or omissions of Tenant and Tenant's officers, agents, and employees.

7.2.2 Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises.

**Section 8. Taxes:** Tenant shall pay as due all real property taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions and charges of every kind and nature whatsoever. As used herein, real property taxes include any fee or charge relating to the ownership, operation, management, maintenance, repair, rebuilding, occupancy, use, or rental of the Premises and includes any assessments for a public improvement.

8.1 Contest of Taxes: Tenant shall be permitted to contest the amount of any tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment. While Landlord will cooperate with Tenant in any dispute as to the taxes, the proceeding must be filed in Tenant's name.

8.2 Real Property Taxes: Tenant shall pay property taxes assessed against the land and improvements. As set out in Section 8 above, Tenant shall pay all personal property taxes.

**Section 9. Payment of Utilities Charges:** Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. Landlord shall have no liability for the failure or interruption of utilities.

## **Section 10. Damage and Destruction**

10.1 Partial Damage: If the Premises are partly damaged and Section 10.2 does not apply, the Premises shall be repaired by Tenant at Tenant's expense as set out in Section 5 above. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Tenant and shall be performed in accordance with the provisions of Section 5.

10.2 Destruction: If the Premises are destroyed or damaged such that the cost of repair exceeds 50% (fifty percent ) of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than 10 (ten) days following the date of damage.

10.2.1 In the event of termination, all rights and obligations of the parties shall cease as of the date of termination and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term.

10.2.2 If neither party elects to terminate, Tenant shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Tenant's reasonable control.

10.2.3 Tenant shall retain as its sole property insurance proceeds attributable to the loss of income from the property. Landlord shall retain as its sole property insurance proceeds attributable to the destruction of the property.

10.3 Rent Abatement: Rent shall not be abated during the repair of any damage.

10.4 Landlord and Tenant reserve Tenant's ability to request a departure from Sections 10.1 and 10.2. Factors to be weighed in determining any departure from Sections 10.1 and 10.2 are identified as the portion of the Premises damaged, the extent of any damage, the amount of any insurance proceeds, anticipated income from continued and future subleases, and the remaining life of the Lease. Landlord, in choosing whether to agree or disagree with Tenant's request, must apply a standard of reasonableness rather than its sole discretion.

## **Section 11. Subleases and Eminent Domain**

11.1 Subleases: Tenant shall have no right to sublease the Premises.

11.2 Condemnation.

11.2.1 Partial taking: If a portion of the Premises is condemned by an entity other than Landlord, and Section 11.3 does not apply, the Lease shall continue on the following terms:

11.2.1.1 Landlord shall be entitled to all of the proceeds of condemnation due it as owner of the Premises, and Tenant shall have no claim against Landlord as a result of the condemnation.

11.2.1.2 Tenant shall be entitled to all of the proceeds of condemnation due it as tenant of the Premises, and Landlord shall have no claim against Tenant as a result of the condemnation.

11.2.1.3 Landlord and Tenant shall negotiate to decide whether, considering the balance of the Premises left after taking and the remaining duration of the Lease:

11.2.1.3.1 Whether or not the Lease shall cease and terminate, or remain in full force and effect, and

11.2.1.3.2 Whether or not repairs and alterations to the Premises are reasonably practical.

11.2.1.3.3 The standard to be applied to this section is one of reasonableness, and not sole discretion.

11.2.1.4 Tenant's obligation to pay the rent identified in Section 3.1 shall be reduced following the vesting of title in the condemning authority only to the extent that the obligations identified in Section 3.1 apply to the balance of the Premises remaining after condemnation.

11.2.1.5 If a portion of Landlord's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Section 11.2.1 applies.

11.3 Total Taking: If a condemning authority other than Landlord takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Tenant was then making of the Premises, the Lease shall terminate as of the date the title vests in the condemning authorities.

11.3.1 Landlord shall be entitled to all of the proceeds of condemnation due it as owner of the Premises, and Tenant shall have no claim against Landlord as a result of the condemnation.

11.3.2 Tenant shall be entitled to all of the proceeds of condemnation due it as tenant of the Premises, and Landlord shall have no claim against Tenant as a result of the condemnation.

11.4 Sale in Lieu of Condemnation: Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated as a taking by condemnation.

## **Section 12. Liens**

12.1 Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens.

12.1.1 If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent.

12.1.2 Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default.

12.2 Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not

jeopardized.

12.3 If a lien is filed as a result of nonpayment, Tenant shall, within 10 (ten) days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

### **Section 13. Quiet Enjoyment**

13.1 Landlord's Warranty: Landlord warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances, except those encumbrances of record. Subject to these exceptions Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the Lease term.

13.2 Estoppel Certificate: Either party will, within thirty (30) days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. Failure to deliver the certificate within the specified time shall be conclusive on the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

### **Section 14. Default.** The following shall be events of default:

14.1 Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease, including the payment of the charges set out as rent in Section 3.1, within 30 (thirty) days after the date of written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30 (thirty) day period, this provision shall be complied with if Tenant begins correction of the default within the 30 (thirty) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

14.2 Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 (thirty) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 (ten) days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this section shall apply to each individual unless within 10 (ten) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

14.3 Failure of Tenant for 30 (thirty) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

## **Section 15. Remedies on Default**

15.1 Termination: In the event of a default the Lease may be terminated at the option of Landlord by written notice to Tenant.

15.1.1 The written notice must specify the manner of default, and if applicable, Tenant's failure to cure the default within the limits set out in Section 14.1.

15.1.2 Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

15.2 Reletting: Following reentry or abandonment, Landlord may relet the Premises to any prospective new tenant deemed appropriate by Landlord, and may alter or refurbish the Premises, or both, or change the character or use of the Premises.

15.2.1 Landlord shall not be required to relet for any particular use or purpose regardless of the provisions of this Lease, or which Landlord considers detrimental to the Premises. Landlord shall not be required to lease to any tenant Landlord considers objectionable.

15.2.2 Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions, including allowances for rent-free occupancy or other rent concession.

15.3 Damages: In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

15.3.1 The loss of rents from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying rent;

15.3.2 The reasonable costs of reentry and reletting including, without limitation, the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred under Section 15.5, or any other expense occasioned by Tenant's default including any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs; and

15.3.3 Any excess of the value of the rent and all of Tenant's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the date the Premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the average prime loan rate of three largest Oregon banks based on total deposits in effect on the date of trial.

15.4 Right to Sue More than Once: Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

15.5 Landlord's Right to Cure Defaults: If Tenant fails to perform any obligation under this Lease, Landlord shall have the option to do so after 30 (thirty) days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Landlord, unless said sums are paid within 30 (thirty) days of demand in which case no interest shall attach. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

15.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

## **Section 16. Surrender at Expiration**

16.1 Condition of Premises: On expiration of the Lease term or earlier termination on account of default, Tenant shall surrender the Premises broom clean.

16.1.1 Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition, unless the terms of permission for the alteration so require.

16.1.2. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date before such surrender.

16.1.3 Tenant shall have removed from the Premises all detritus of its business operations.

16.1.4 The Premises shall be free and clear of all subleases, tenancies, and occupancies.

16.1.5 Tenant's obligations under this section shall be subordinate to the provisions of Section 10 relating to destruction.

16.2 Fixtures: All fixtures placed on the Premises during the term shall remain the property of Tenant. Before expiration or other termination of the Lease term, Tenant shall remove, without injury to the Premises, all furnishings, furniture, and trade equipment and fixtures placed on the Premises during the term.

16.2.1 If Tenant fails to do so, this failure shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 (twenty) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal.

16.2.2 If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

16.3 Holdover: If Tenant does not vacate the Premises at the time required,



Landlord shall have the option to treat Tenant as a month-to-month tenant, subject to all of the provisions of this Lease, except the provisions for term and at a rental rate equal to one and a half times (150%) of market rates per month, without any rights that would otherwise be provided by law with respect to a month-to-month tenancy. Landlord, in the alternative, may eject Tenant from the Premises and recover damages caused by wrongful holdover.

16.3.1 Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

16.4 The provisions of Section 16 shall survive any termination of this Lease.

## **Section 17. Miscellaneous**

17.1 Entire Agreement: This Commercial Lease, including any exhibits attached to it, is the entire agreement between the parties with respect to the subject matter of this Lease. It supersedes all prior understandings between the parties, and is the final expression of their consensus. To the extent there are terms contained in the Previous Lease that are not inconsistent with this Commercial Lease, those terms shall remain applicable. This Lease may not be modified, changed, supplemented, or terminated, nor may any obligations under it be waived, except by a written instrument signed by the authorized party.

17.2 Nonwaiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. No extension of time for performing any obligation or act shall be treated as an extension of time for the performance of any other obligation or act.

17.3 Invalidity: If any term or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected. Each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

17.4 Applicable Law: Landlord and Tenant each acknowledge that this Lease has been negotiated and entered into in the State of Oregon. The parties expressly agree that this Lease shall be governed by, interpreted under, and enforced according to the laws of the State of Oregon, without giving effect to the conflict of laws provisions thereof.

17.5 Notices: Landlord and Tenant must use the addresses set out below for purposes of communicating under this Lease. Notices personally delivered shall be treated as received on their receipt at the office of the addressee. Messages sent by mail shall be sent by registered or certified mail, postage prepaid, return receipt requested, and shall be treated as received three days after deposit in the United States mail.

Landlord's Address: Development Agency Manager  
Clackamas County Development Agency  
Development Services Building  
150 Beaver Creek Road  
Oregon City, Oregon 97045

Tenant's Address: Miles Fiberglass & Composites, Inc.  
8855 SE Otty Road  
Happy Valley, Oregon 97086

17.6 Succession: This transaction is part and parcel of a related series of transactions between Landlord and Tenant. In these transactions the identity and qualifications of Landlord and Tenant are of special importance, one to the other. Neither Landlord nor Tenant shall have the right to assign their respective rights under this Lease. No assignee shall succeed to any of the rights and remedies under this Lease, and no assignee shall be able to claim specific performance.

17.7 Entry for Inspection: Landlord, with a 10 (ten) day written notice to Tenant, shall have the right to enter on the Premises at any time to determine Tenant's compliance with this Lease; to make necessary repairs to the building or to the Premises; to show the Premises to any prospective tenant or purchaser; to conduct surveys, inspections, tests and analysis necessary for the proposed Sunrise Corridor transportation project and, in addition, shall have the right, at any time during the last two months of the term of this Lease, to place and maintain on the Premises notices for leasing or selling of the Premises.

17.8 Interest on Rent and Other Charges: Any payment required of Tenant by this Lease shall, if not paid within 30 (thirty) days after it is due, bear interest at the rate of 9% (nine percent) per annum from the due date until paid.

17.8.1 If Tenant fails to make any payment required by this Lease to be paid to Landlord within 30 (thirty) days after it is due, Landlord may elect to impose a late charge of five cents per dollar (\$0.05/\$1.00) of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment.

17.8.2 Tenant shall pay the late charge on demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

17.9 Merger: There shall be no merger unless and until all persons having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting such merger and record the same.

17.10 Time of Essence: Time is of the essence of the performance of each of Landlord's and Tenant's obligations under this Lease.

17.11 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement.

***The balance of this page has been intentionally left blank.***

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date and year written above. The persons signing below each represent and warrant that each has the full right and authority to enter into this Lease and to bind the party for whom such person signs to the terms and provisions of this Lease.

**Landlord: CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the duly designated Urban Renewal Agency of the County of Clackamas County

By: \_\_\_\_\_

Jim Bernard, Chair

Date: \_\_\_\_\_

**Tenant: MILES FIBERGLASS & COMPOSITES, INC.**

By: \_\_\_\_\_

Lori Miles-Olund, President

Date: \_\_\_\_\_



**DAN JOHNSON**  
MANAGER

**DEVELOPMENT AGENCY**

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

February 28, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Granting of a Permanent Right of Way Easement for Road Purposes

<b>Purpose/Outcome</b>	Authorization for the Chair to execute a Permanent Right of Way Easement for Road Purposes in favor of Clackamas County to become part of SE Monroe Street.
<b>Dollar Amount and Fiscal Impact</b>	<b>N/A</b>
<b>Funding Source</b>	Not applicable. No funding is required as part of this transaction.
<b>Duration</b>	Permanent upon execution.
<b>Previous Board Action/Review</b>	The Board of County Commissioners previously approved a contract with Tapani, Inc. for construction of the Boyer Drive Extension Project.
<b>Strategic Plan Alignment</b>	"Build a strong infrastructure" and "Ensure safe, healthy and secure communities".
<b>Contact Person</b>	Sharan Hams-LaDuca, Senior Right of Way Agent, Dept. of Transportation and Development, Engineering - 503-742-4675

**BACKGROUND:** The Clackamas County Development Agency has completed construction of the Boyer Drive Extension Project. This conveyance, after it is recorded, will be referenced in the post construction survey that will be submitted to the County Surveyor. The property from which this easement comes was purchased by the Agency as part of the project and needs to be conveyed to Clackamas County and subsequently become part of county maintained road right of way. The easement is described in the attached Exhibits "A" and "B".

The Agency is requesting the Board grant this Permanent Right of Way Easement for Road Purposes to Clackamas County and "approve" the conveyance as required for recordation purposes.

County Counsel has reviewed and approved the proposed easement document.

**RECOMMENDATION:** Staff respectfully recommends the Board, as the governing body of the Clackamas County Development Agency:

- Approve the Permanent Right of Way Easement for Road Purposes by and between the Clackamas County Development Agency and Clackamas County.
- Delegate authority to the Chair to execute the Permanent Right Of Way Easement for Road Purposes.
- Record the Permanent Right of Way Easement in the Deed Records of Clackamas County at no cost to the Development Agency.

Respectfully submitted,

Dave Queener, Program Supervisor  
Development Agency

Grantor: Clackamas County Development Agency		State of Oregon
Address: 150 Beaver creek Rd. Oregon City, OR 97045		
Grantee: Clackamas County 150 Beaver creek Rd. Oregon City, OR 97045		
After Recording Return to: Clackamas County Engineering 150 Beaver creek Rd. Oregon City, OR 97045		
Until a change is requested, all taxes shall be sent to: No Change		Accepted by Clackamas County by Act of the Road Official Acceptance Date: _____
Road Name: <u>Monroe Street</u> DTD Rd. File No.		Authorized by Clackamas County Ordinance No. 02-2009 Project:

**PERMANENT RIGHT OF WAY EASEMENT FOR ROAD PURPOSES**  
(Corporate or Non Profit Grantor)

For value received, Clackamas County Development Agency, (Grantor), hereby grants, bargains, sells and conveys to Clackamas County, a political subdivision of the State of Oregon, its heirs, successors and assigns, (Grantee), a permanent easement dedicated to the public for road and right of way purposes, in, under, upon, and across Grantor's real property located in Clackamas County, State of Oregon.

Grantor's real property is more particularly described as follows: A parcel of land located in the NE 1/4 of Section 32, T1S, R2E, WM, more particularly described by Exhibit B of Property Line Adjustment Deed to Clackamas County Development Agency, recorded November 29, 2016 as Document No. 2016-081914, Clackamas County Deed Records.

The Permanent Right of Way Easement for Road Purposes is more particularly described as follows: A strip of land as described and depicted in Exhibits "A" and "B" attached hereto and by this reference made a part hereof (the Easement Area).

Grantee's rights include, but are not limited to, Grantee's right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes.

Grantor, Grantor's heirs, successors, assigns or representatives, shall not construct or maintain any building or other structures upon the above described Easement Area.

This easement does not obligate the public or Grantee to replace landscaping, fencing, shrubs, trees or other improvements that may be placed within the Easement Area in the future, and which interfere with Grantee's use of the Easement Area for the purposes described in this document.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and

regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,  
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,  
a corporate body politic under ORS Chapter 457

By: \_\_\_\_\_  
Jim Bernard, Chair

STATE OF OREGON            )  
  ) ss.  
County of Clackamas        )

This instrument was signed and attested before me this \_\_\_\_\_ day of \_\_\_\_\_ 2019,  
by Jim Bernard as Chair of the Board of County Commissioners on behalf of Clackamas County  
Development Agency.

\_\_\_\_\_  
Notary Public for State of Oregon  
My Commission Expires: \_\_\_\_\_



EXHIBIT A

SE BOYER DRIVE EXTENSION  
October 22, 2018  
OWNER: Clackamas County Development Agency  
Page 1 of 2

County Project No. DA-88  
Map & Tax Lot No.12E32AA-6100  
Property No. 1

**Tract 1 (Permanent Right-Of-Way Easement For Road Purposes)**

A tract of land, as shown on attached Exhibit "B", lying in the Northeast One-Quarter of the Northeast One-Quarter of Section 32, Township 1 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and being a portion of that tract of land as described by Exhibit B of Property Line Adjustment Deed to Clackamas County Development Agency, recorded November 29, 2016 as Document No. 2016-081914, Clackamas County Deed Records, said parcel being more particularly described as follows:

COMMENCING at the southeast corner of that parcel as shown on Exhibit B of said Document No. 2016-081914, said point also being on the west right-of-way line of SE 82nd Avenue (Oregon State Highway 213)(Market Road No. 38), as shown on Survey Number 2016-095, Clackamas County Survey Records;

Thence N00°01'35"W, along said west right-of-way line, 35.47 feet to the **TRUE POINT OF BEGINNING**;

Thence leaving said west right-of-way line S89°58'25"W, 10.00 feet to a point 10.00 feet westerly when measured at right angles to said west right-of-way line;

Thence N00°01'35"W, parallel with said west right-of-way line, 24.00 feet to a point;

Thence N55°06'08"W, 8.03 feet to a point;

Thence N89°53'51"W, 97.09 feet to a point on the west line of Exhibit B of said Document No. 2016-081914;

Thence N00°06'09"E, along said west line, 28.97 feet to the northwest corner of Exhibit B of said Document No. 2016-081914;

Thence tracing the north line of Exhibit B of said Document No. 2016-081914 the following three courses and distances:

Thence, S89°53'06"E, 33.53 feet to a point;

Thence, S00°06'54"W, 10.00 feet to a point:

Thence S89°53'06"E, 80.11 feet to a point on the west right-of-way line of SE 82<sup>nd</sup> Avenue (Oregon State Highway 213) (Market Road No. 38);

Thence, S00°01'35"E, along said west right-of-way line of SE 82nd Avenue (Oregon State Highway 213) (Market Road No. 38), 47.51 feet to **TRUE POINT OF BEGINNING**.

The parcel of land to which this description applies contains 2,792 square feet more or less.

This legal description and the basis of bearings thereof is based on Record of Survey SN 2016-095, Clackamas County Survey Records.



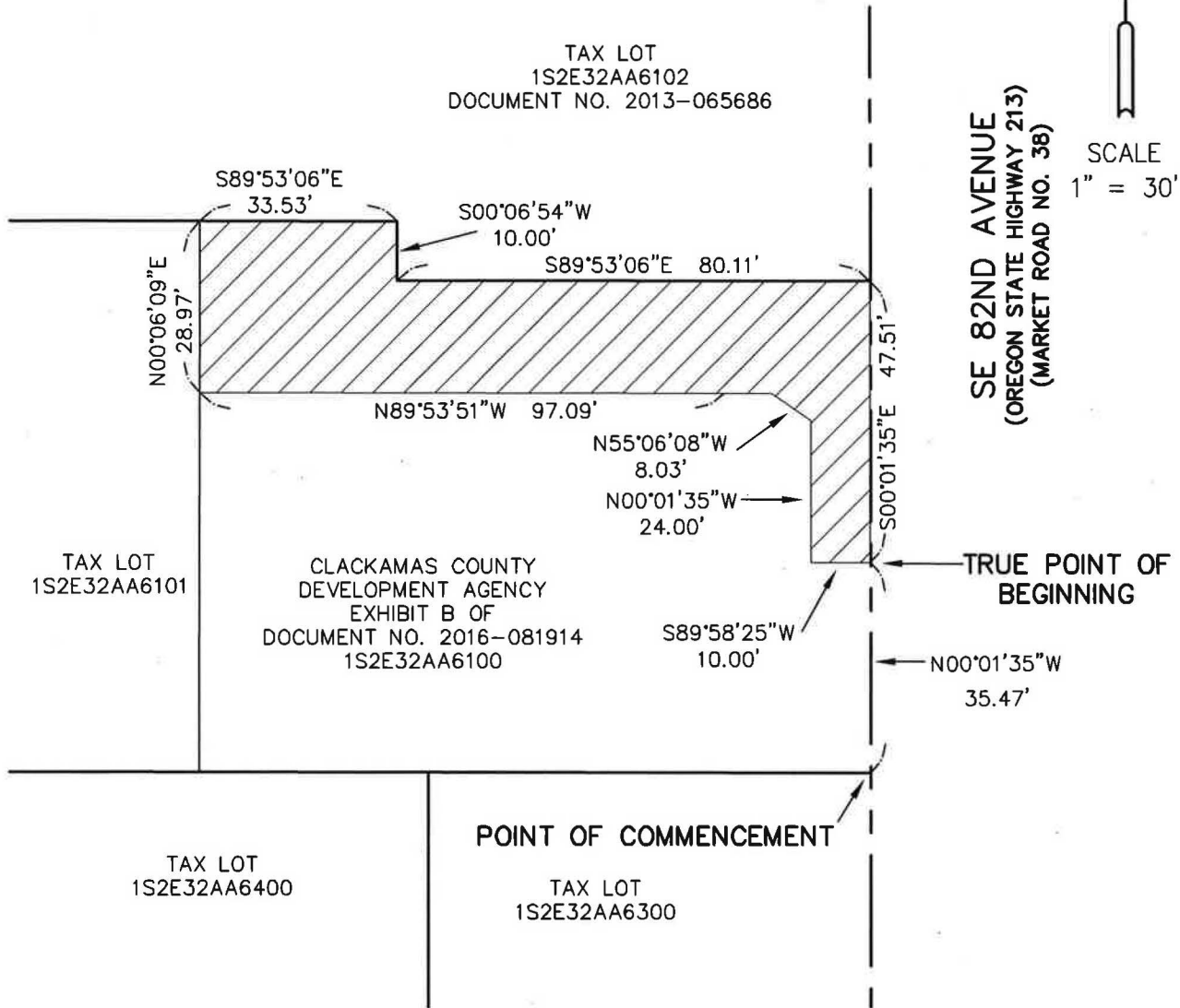
RENEWS: 12-31-2019

# EXHIBIT "B"

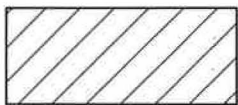
LOCATED IN THE NE 1/4 OF  
SECTION 32, T.1S., R.2E., W.M.,  
CLACKAMAS COUNTY, OREGON



SCALE  
1" = 30'



## LEGEND



TRACT 1  
PERMANENT RIGHT-OF-WAY  
FOR ROAD PURPOSES  
± 2,792 SQ.FT.

SEE ATTACHED  
LEGAL DESCRIPTION



**Harper  
Houf Peterson  
Righellis Inc.**

ENGINEERS • PLANNERS  
LANDSCAPE ARCHITECTS • SURVEYORS

205 SE Spokane Street, Suite 200, Portland, OR 97202  
phone: 503.221.1131 www.hhpr.com fax: 503.221.1171

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