



**DAN JOHNSON**  
MANAGER

**DEVELOPMENT AGENCY**

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

June 7, 2018

Development Agency Board  
Clackamas County

Members of the Board:

**Approval of a Second Amendment to the Disposition Agreement  
with Clackamas Corporate Park, LLC**

<b>Purpose/ Outcomes</b>	Authorization for the Chair to execute a Second Amendment to a Disposition Agreement to convey real property from the Clackamas County Development Agency to Clackamas Corporate Park, LLC.
<b>Dollar Amount and Fiscal Impact</b>	The agreement stipulates sale of the property for \$3,724,380.
<b>Funding Source</b>	Not Applicable. No funding considered as a part of this property transaction
<b>Safety Impact</b>	Not Applicable
<b>Duration</b>	This amendment modifies the post-closing portion of the agreement to clarify remedies in the event the Agency does not complete the required wetland mitigation.
<b>Previous Action</b>	Disposition Agreement Approval – June 29, 2017; 1 <sup>st</sup> Amendment – November 30, 2017
<b>Contact Person</b>	David Queener, Program Supervisor – Development Agency 503-742-4322 or davidque@co.clackamas.or.us

**BACKGROUND:**

The Development Agency owns approximately 16.79 acres situated at the southwestern intersection of SE Capps Road and 120<sup>th</sup> Avenue. The property is currently zoned General Industrial.

Clackamas Corporate Park, LLC is under a Disposition Agreement with the Agency to acquire the property for redevelopment purposes. The Agreement provides that the Agency will be responsible for offsite wetlands mitigation work, as described in a permit obtained from the U.S. Army Corps of Engineers which will allow the developer to fill certain wetlands on the property. The Agreement currently specifies general remedies in the event the Agency fails to comply with the permit conditions. The developer has requested permission to have the ability to correct any failure of the Agency to fulfill its

obligation under the wetland permit. Agency and developer propose to amend Section 8.2 of the post-closing portion of the Agreement to allow the developer the ability to take corrective action under the wetland permit, as described above. Under the amended Section 8.2, the developer may only act after giving the Agency adequate notice and an opportunity to cure the failure under the wetland permit.

The Second Amendment to the Disposition Agreement, which the Board is being asked to approve today, is the result of ongoing negotiations with the developer as they have proceeded through their due diligence. The Amendment will modify the post-closing portion of the Agreement. All other terms outlined in the Agreement remain unchanged. The parties remain on track to close this transaction within the next few months.

County Counsel has reviewed and approved this Agreement.

**RECOMMENDATION:**

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, move by consent to:

- Approve the Second Amendment to the Disposition Agreement with Clackamas Corporate Park, LLC.
- Record the Second Amendment to the Disposition Agreement in the Deed Records of Clackamas County at no cost to the Development Agency.

Respectfully submitted,

David Queener  
Program Supervisor, Development Agency

## SECOND AMENDMENT TO DISPOSITION AGREEMENT

**THIS SECOND AMENDMENT TO DISPOSITION AGREEMENT (“Amendment”)** is entered into effective as of June \_\_\_\_, 2018, between **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (“**Agency**”), and **CLACKAMAS CORPORATE PARK, LLC**, a Delaware limited liability company (successor by assignment from Trammell Crow Portland Development, Inc.) (“**Developer**”).

### RECITALS

A. Agency and Developer are parties to that certain Disposition Agreement dated effective as of June 29, 2017, as amended by that First Amendment dated November 30, 2017 (collectively, the “**Disposition Agreement**”), concerning approximately 16.80 acres of land located west of SE 120<sup>th</sup> Avenue and south of Capps Road, Clackamas County, Oregon, as more particularly described in the Disposition Agreement (the “**Property**”).

B. The parties desire to modify the Disposition Agreement on the terms and conditions set forth herein. All capitalized terms used in this Amendment and not otherwise defined herein shall have their meanings as set forth in the Disposition Agreement.

### AGREEMENT

1. **Post-Closing Agreement.** All references to the “Post-Closing Agreement” in the Disposition Agreement shall mean and refer only to the form of Post-Closing Agreement attached as Exhibit A to this Amendment. The Post-Closing Agreement attached as Exhibit “C” to the Disposition Agreement is replaced in its entirety by the Post-Closing Agreement attached hereto.

2. **Counterpart; Email.** This Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment. Facsimile or email transmission of any signed original of this Amendment, and retransmission of any signed facsimile or email transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm transmitted signatures by signing an original document.

3. **Confirmation.** The Disposition Agreement is hereby amended and modified in accordance with the terms of this Amendment. Except as expressly modified by this Amendment, the Disposition Agreement and all its terms and provisions are hereby acknowledged, approved, ratified and confirmed and shall be and remain in full force and effect.

[Signatures on next page.]

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date first written above.

**AGENCY:**

**CLACKAMAS COUNTY DEVELOPMENT AGENCY,**  
a corporate body politic

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**DEVELOPER:**

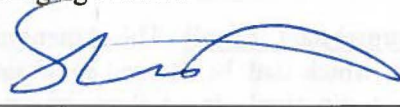
**CLACKAMAS CORPORATE PARK, LLC,**  
a Delaware limited liability company

By: Lion-TCC Development II, LLC,  
a Delaware limited liability company

Its: Managing Member

By: TC Industrial Associates, Inc.,  
a Delaware corporation

Its: Managing Member

By:   
Steve Wells, Vice President

**EXHIBIT A TO SECOND AMENDMENT TO DISPOSTION AGREEMENT**

**Post-Closing Agreement**

[see attached]

## Post-Closing Agreement

### POST-CLOSING ESCROW HOLDBACK AND DEVELOPMENT AGREEMENT

**THIS POST-CLOSING ESCROW HOLDBACK AND DEVELOPMENT AGREEMENT** (this “**Agreement**”) is entered into by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the “**Agency**”) and **CLACKAMAS CORPORATE PARK, LLC**, a Delaware limited liability company (“**Developer**”), and Chicago Title Insurance Company of Oregon (“**Escrow Holder**”). The latest date on which this Agreement is signed by Agency and Developer (as indicated below their signatures herein) is referred to in this Agreement as the “**Effective Date.**”

### RECITALS

A. Pursuant to that Disposition Agreement dated effective as of June 30, 2017 (as amended and assigned, the “**DA**”), Developer acquired from Agency that certain real property comprised of approximately 16.80 acres of land located west of SE 120<sup>th</sup> Avenue and south of Capps Road in Clackamas County, Oregon, as more particularly described in the Deed (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 one or more industrial building(s) with a total building floor area in compliance with the minimum floor area ratio specified in Section 1.1 below, together with associated improvements on the Property.

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) (such sum, together with all interest earned thereon, is collectively referred to herein as the “**Funds**”) from a portion of Agency’s net sales proceeds withheld at Closing by Escrow Holder, as security for satisfaction of the Economic Development Goals (defined below) 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. **ECONOMIC DEVELOPMENT GOALS.** Subject to the terms and conditions of this Agreement, Developer will pursue satisfaction of the following economic development goals relating to the Property (collectively, the “**Economic Development Goals**”) within the specified time periods:

1.1 **Building Improvements; Floor Area Ratio Goal.** Developer will pursue Substantial Completion (as defined below) of the Building Improvements in a good and workmanlike manner and in accordance with applicable laws and building codes. The Building Improvements shall provide a floor area ratio (as defined in Clackamas County Code Section 11.03.020(V)) of not less than 0.35. Developer will deliver to Agency for its information and review copies of the plans and specifications for the Building Improvements as the same are prepared by Developer or its design professionals; provided that Agency acknowledges and agrees that Agency has no approval or veto rights with respect to such plans and specifications and they are subject to change at Developer's discretion, subject at all times to the foregoing minimum floor area ratio. The Building Improvements shall be substantially completed on or before twenty-four (24) months after the Effective Date, subject to delays due to force majeure and other causes beyond the reasonable control of Developer. The goal under this Section 1.1 shall be deemed met upon Substantial Completion of the Building Improvements in accordance with the foregoing. As used in this Agreement, "**Substantial Completion**" of the Building Improvements shall occur upon issuance of the certificate of substantial completion for the Building Improvements by the project architect. Such certificate of substantial completion for the Building Improvements shall not be unreasonably withheld, conditioned or delayed.

1.2 **Job Quantity Goal.** Within twelve (12) months after the Building Improvements are fully occupied by tenant(s) or owners, the ratio of total number of workers employed at the building to the total square feet of floor area in such building shall be equal to or greater than 1 worker per 1200 square feet of building floor area. For example, if the building is a total of 250,000 square feet of floor area, the minimum number of workers to satisfy this goal is 208. The foregoing ratio shall be deemed satisfied for the Building Improvements upon the first instance of such ratio being met at any time during the 12-month period after the Building Improvements are fully occupied by tenant(s) or owners. The goal under this Section 1.2 shall be deemed satisfied when all of Building Improvements have so satisfied the ratio within the applicable 12-month period.

1.3 **Wage Goal.** Within twelve (12) months after the Building Improvements are fully occupied by tenant(s) and/or owners, the average annual wages of all employees in such building, excluding senior executive positions (e.g., CEO, COO, CFO, etc.), shall be equal to or greater than the National Annual Mean Wage, as determined by the official publication of the Bureau of Labor Statistics available as of the Effective Date, as provided below. The goal under this Section 1.3 shall be deemed satisfied upon the first instance of the foregoing minimum average annual wages of the tenant(s) or owners being met at any time during the 12-month period. The applicable National Annual Mean Wage shall be based on the major occupational group used by the Bureau of Labor Statistics (Occupational Employment Statistics) for the business as a whole. For purposes of this goal, "employer" shall refer to the initial tenant(s) and/or owner(s) of each building; and "employees" shall mean workers who are 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 Developer seek such information from each employer as provided in Section 1.4 below.

1.4 **Supporting Information.** Developer will use commercially reasonable efforts to include the following provision (or substantially similar provision) in its lease or sale agreement with each occupant of the Building Improvements:

“Upon request of [Developer] or [Agency] from time to time during the first fifteen (15) months of full occupancy, [Tenant/Owner] agrees to certify in writing the total number of employees and average annual wages of employees working at the [Premises/Property] as of the date(s) requested, provided that the average annual wages shall exclude the wages of senior executive positions (e.g., CEO, COO, CFO, etc.).”

If any occupant is unwilling to agree to such provision, Developer will use commercially reasonable efforts to obtain such information from the occupant as it is willing to provide with respect to the above Economic 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 Economic Development Goals under Section 1.2 and Section 1.3 above. Notwithstanding the foregoing, Developer is not required to forego or jeopardize a potential transaction if a tenant or buyer is unwilling to agree to such provision and Developer’s failure to obtain the same or any information from occupant shall not constitute a breach by Developer under this Agreement, subject to disbursement of the Funds as provided in Section 3.4 below.

2. **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.

3. **ACCOUNT.**

3.1 **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.

3.2 **Account Deposit.** On the date hereof, Agency shall deposit the Funds in the Account, which Funds shall be withheld from Agency’s net sale proceeds at the time of the closing of Developer’s acquisition of the Property. Until disbursed as provided herein, all Funds in the Account shall be held by the Escrow Holder in accordance with the terms of this Agreement.

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

3.4 **Disbursement of Funds.** Except as otherwise expressly provided in this paragraph, upon Substantial Completion of the Building Improvements and satisfaction of all of



the other Economic Development Goals, 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 Economic Development Goals have been satisfied. The sole condition for disbursement of the Funds to Developer is satisfaction of the Economic Development Goals. Notwithstanding the foregoing, if all of the Economic Development Goals are not substantially completed and satisfied by the later of (i) the last of the dates set forth in Section 1 above, subject to delays due to force majeure or other causes beyond the reasonable control of Developer, or (ii) forty-eight (48) months after the Effective Date, all Funds 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 Funds to Agency is the failure to substantially complete the Building Improvements and failure to satisfy the Economic Development Goals by the foregoing deadline. The Funds shall be disbursed by a single payment, and shall not be paid on a pro rata basis or otherwise disbursed in installments.

3.5 **Disbursement.** 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) days of receipt of the request.

3.6 **Termination of Account.** The Account shall be terminated upon disbursement of all funds in the Account as provided in this Agreement.

4. **LIMITATION OF LIABILITY.** Notwithstanding any other provision herein (other than those provisions relating to wetland mitigation), the liability of either party under this Agreement shall be strictly limited solely to a sum equal to the original total amount of the Funds as provided by this Agreement. Except for those provisions relating to wetland mitigation, in no event shall (i) Developer have any obligations or liability whatsoever with respect to this Agreement in excess of the Funds in the Account, and (ii) Agency have any obligations or liability whatsoever with respect to this Agreement in excess of an amount equal to the original total amount of the Funds in the Account. Except as provided by the foregoing and those provisions relating to wetland mitigation, 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, order, 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 4 shall survive the expiration or termination of this Agreement.

5. **ESCROW HOLDER.**

5.1 **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 in the Account.

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

5.3 **Resignation of Escrow Holder.**

(a) 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 new escrow agent doing business in Portland, Oregon, 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.

(b) 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.

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

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

6. **DEVELOPER OBLIGATIONS UNDER THE PLAN.** Pursuant to Section 715 and 745 of the Plan, Developer agrees as follows:

6.1 Developer shall 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.

6.2 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.

6.3 Agency acknowledges receipt of a copy of the plans and specifications prepared to date for construction of the Building Improvements referenced on Exhibit A attached, subject to Section 1.1 above.

6.4 Developer shall commence and complete the Building Improvements within the period of time as provided in this Agreement.

6.5 Developer covenants that it will not discriminate against any person or group of persons on account of 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.

6.6 Developer shall 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 11.2.

7. **DEVELOPER CONSTRUCTION AND STORMWATER MANAGEMENT OBLIGATIONS.** Developer's construction activities on the Property will conform to the applicable requirements set forth in the Oregon Department of Environmental Quality's 401 Water Quality Certification Permit (#2012-00181-1) (the "WQC Permit"). **Developer acknowledges that post construction stormwater facilities must be maintained for the life of the facility in accordance with the terms of the WQC Permit.** Developer will permit reasonable access on the Property to the Agency, the Oregon Department of Environmental Quality, and the United States Army Corps of Engineers for purposes of monitoring compliance with the 401 Water Quality Certification Permit (#2012-00181-1) and the U.S. Army Corps of Engineers Permit (#NWP-2012-181-1). Access by the Agency will be deemed reasonable where Developer is given at least 48 hours' prior notice of such intended entry, such access is accomplished in a manner so as to minimize interference with the use and operations of Developer or tenants or occupants thereon, and Agency shall indemnify and defend Developer and its successors and assigns for, from and against any and all damages, losses, liens, claims, liabilities, costs and expenses (including reasonable attorneys' fees) to the extent arising from or related to such entry. Access by the Oregon Department of Environmental Quality and the United States Army Corps of Engineers will be deemed reasonable where access is sought pursuant to the terms of the 401 Water Quality Certification Permit (#2012-00181-1), the U.S. Army Corps of Engineers Permit (#NWP-2012-181-1), or any applicable code, statute, rule or regulation.

8. **WETLANDS MITIGATION.**

8.1 Continuing Obligations. Notwithstanding any wetlands fill work on the Property performed by Developer, Agency at its expense shall at all times remain solely responsible for complying with all continuing obligations and requirements relating to the off-site mitigation, including maintenance, monitoring and performance requirements, in accordance with the Wetlands Permit (as defined in the DA) and applicable law. Agency warrants that it will take all necessary actions to ensure that Developer has the right at all times to fill the Property Wetlands consistent with the Wetlands Permit and applicable law. Agency will indemnify and defend Developer and its officers, employees, directors, shareholders, agents, successors and assigns for, from and against any lien, claim, action, suit, loss, liability, damage, cost and expense (including reasonable attorneys' fees) arising from or related to Agency's failure to perform its obligations under this Section 8.

8.2 Mitigation Bank Remedy. If Developer is subject to any Claims due to Agency's failure to perform any of its obligations under Section 8.1 above or under Section 5 of the DA (including without limitation Claims resulting in any stoppage, delay or restriction to Developer's work on or use of any of the Property), Developer will give written notice of such failure to Agency. Agency will have period of ten (10) days after such notice to cure or correct such failure. If Agency fails to cure or correct such failure within such 10-day period, Developer at its option may thereafter purchase compensatory mitigation credits from a qualified wetlands mitigation bank and/or take such other actions as Developer in its discretion deems necessary to ensure that its work and or use of the Property is not further delayed, restricted or otherwise jeopardized by reason of Agency's failure. In such event, Agency shall reimburse and pay Developer upon demand for all costs incurred by Developer in taking such actions, including the full costs of the mitigation credits from the wetlands mitigation bank. The provisions of this Section 8.2 do not limit or alter either party's obligations, liabilities, rights or remedies hereunder or under any other agreements or applicable law.

8.3 Survival. The provisions of this Section 8 shall survive expiration or termination of this Agreement and shall not be limited by any other provisions in this Agreement.

9. **FIRE ACCESS COVENANT**. Developer agrees to grant an access easement to Parcel 2 (defined below) for emergency fire access purposes only over and across a portion of the Property if, when and to the extent such easement is required to be located on the Property in connection with the development of Parcel 2, subject to the following conditions: (i) the location of the easement area shall conform to applicable rules and regulations related to the siting and construction of an emergency fire access and be mutually acceptable to the parties and shall be designed in a manner so as to minimize interference with the development and use of the Property and Building Improvements, (ii) the owner of Parcel 2 will be responsible to pay all costs of alterations, additions or improvements within the easement area in connection with such easement above and beyond what is required for the emergency fire access service Parcel 1, and (iii) the owner of Parcel 2 will indemnify and defend the owner and occupants of the Property for, from and against any and all actions, suits, liens, claims, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to the use of or improvements on the easement area by or for the benefit of the owner or occupants of Parcel 2. Notwithstanding the foregoing, Developer shall not have the obligation to grant the foregoing easement if the owner of Parcel 2 has an alternative means of providing such emergency fire

access on property other than the Property. As used herein, “Parcel 2” shall mean that parcel identified as “Parcel 2” on the survey attached as Exhibit A to the DA.

10. **RIGHT OF ENTRY FOR WETLAND BUFFER MITIGATION.** In furtherance of Developer’s right to construct wetland buffer mitigation on Agency’s adjacent property pursuant to Section 5 of the DA, Agency hereby grants to Developer and its agents, employees and contractors a right of entry in, on, to, across, under, over and through such adjacent property (shown on Exhibit F of the DA) for purposes of constructing, repairing, improving, maintaining, replacing, monitoring, inspecting and operating such wetland buffer mitigation and related improvements (including irrigation lines) within the designated buffer mitigation areas. Developer will give Agency at least 48 hours’ prior notice of its intended entry. Developer shall indemnify and defend Agency and its successors and assigns for, from and against any and all damages, losses, liens, claims, liabilities, costs and expenses (including reasonable attorneys’ fees) caused by Developer or its agents, employees or contractors and arising from or related to such entry pursuant to this Section 10. The foregoing right of entry commences on the date hereof and expires on the fifth anniversary of completion of the initial plantings by Developer. The provisions of this Section 10 shall survive the expiration or termination of this Agreement.

11. **GENERAL PROVISIONS.**

11.1 **Time of Essence.** Time is of the essence of each and every provision of this Agreement.

11.2 **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, so long as the proposed assignee has demonstrated by objectively reasonable evidence the ability to perform all outstanding obligations under this Agreement, including without limitation the financial resources to do so. The parties acknowledge and agree that any proposed assignee who is likely to satisfy the Economic Development Goals with respect to the portion of the Property occupied by it will be favorably regarded by Agency in connection with Developer’s request for consent to an assignment by Developer to such assignee. Upon Agency’s consent to an assignment, Developer shall be released from all obligations and liability under this Agreement. 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 11.2, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns.

Notwithstanding the foregoing, Developer may assign all or part of its interest in this Agreement without consent of Agency (but with notice to Agency) to one or more affiliates of Developer (an “**affiliate**” is any entity that directly or indirectly control, is controlled by or under common control with Developer) or any “joint venture” entity formed by Developer and in which Developer has an equity interest. As used above, the term “control” or “controlled by” means the power to direct the management of such entity through voting rights, ownership or contractual obligations. In the absence of a written agreement to the contrary by all parties, all

rights to receive Funds under this Agreement in favor of Developer shall automatically vest in a permitted assignee of Developer.

11.3 **Non-Liability of Officials and Employees.** Notwithstanding any other provision herein, no member, elected official, employee, shareholder, director, officer, agent or representative of any of the parties (or their respective successors and assigns) shall be personally liable to the other party (or its successors and assigns) in the event of any default or breach of any provision of this Agreement by any party (or its successors and assigns).

11.4 **Non-Waiver of Governmental Rights.** Subject to the terms and conditions of this Agreement, 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 approvals that are or may be required.

11.5 **Notices.**

(a) 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.

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

(c) 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: Dan Johnson  
Email: [danj@co.clackamas.or.us](mailto:danj@co.clackamas.or.us)

DEVELOPER:

Clackamas Corporate Park, LLC  
c/o Trammell Crow Company  
1300 SW Fifth Avenue, Suite 3050  
Portland, Oregon 97201  
Attn: Kirk Olsen  
Email: [kolsen@trammellcrow.com](mailto:kolsen@trammellcrow.com)

With a copy to:

LIT Industrial LP  
c/o Clarion Partners  
1717 McKinney Ave, Ste 1900  
Dallas, TX 75202  
Attn: Sara Young  
Email: [sara.young@clarionpartners.com](mailto:sara.young@clarionpartners.com)

With a copy to:

Stoll Berne  
209 SW Oak Street, Suite 500  
Portland, Oregon 97204  
Attn: Andy Davis  
Email: [adavis@stollberne.com](mailto:adavis@stollberne.com)

ESCROW HOLDER:

Chicago Title Insurance Company of Oregon  
10151 SE Sunnyside Road, Suite 300  
Clackamas, Oregon 97015  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

Each party may change its address for notice by giving not less than fifteen (15) days' prior notice of such change to the other party in the manner set forth above.

11.6 **Relationship**. Nothing contained in this Agreement will create joint venture or partnership, establish relationship of principal and agent, establish relationship of employer and employee, or any other relationship of a similar nature between the Developer and Agency.

11.7 **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 waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

11.8 **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.

11.9 **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.

11.10 **Force Majeure.** Notwithstanding any other provision herein, no party will be liable for breach or default of this Agreement due to delay in performing its obligations under this Agreement to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, strikes, labor disputes, volcanoes, fire, flood, earthquake, weather, acts of God, epidemic, acts of any federal, state or local government or agency, or any other event beyond the reasonable control of the affected party.

11.11 **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

11.12 **Mediation Option.** The parties acknowledge that mediation may help the parties to settle their dispute. Therefore, in case of dispute under this Agreement, either party may propose mediation whenever appropriate by any mediation process or mediator as the parties may mutually agree upon (each in their sole discretion).

11.13 **Changes in Writing.** This Agreement and any of its terms may only be changed, waived, discharged or terminated by written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11.14 **Email Signatures.** Facsimile or email transmission of any signed original document, and retransmission of any signed facsimile or email 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 or email transmitted signatures by signing an original document.

11.15 **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

11.16 **Invalidity of Provisions.** In the event any provision of this Agreement, or any instrument to be delivered by Developer at closing pursuant to this Agreement, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

11.17 **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.

11.18 **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.

11.19 **Captions.** The captions of the section and subsections are used solely for convenience and are not intended to alter or confine the provisions of this Agreement.



11.20 **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. Subject to the terms of Section 11.2, 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.

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

**DEVELOPER:**

**CLACKAMAS CORPORATE PARK,  
LLC**, a Delaware limited liability company

By: Lion-TCC Development II, LLC,  
a Delaware limited liability company

Its: Managing Member

By: TC Industrial Associates, Inc.

Its: Managing Member

By: \_\_\_\_\_  
Steve Wells, Vice President

Date of Execution: \_\_\_\_\_, 2018

[Signature on next page.]

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

**AGENCY:**

**CLACKAMAS COUNTY  
DEVELOPMENT AGENCY**, a corporate  
body politic

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

[Signature on next page.]

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

**ESCROW HOLDER:**

**CHICAGO TITLE INSURANCE  
COMPANY OF OREGON**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Attachments

Exhibit A      Description of Building Improvements to Date

## **EXHIBIT A**

### **Description of Building Improvements**

[List plans and specifications for Buildings Improvements prepared to date]