



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 8, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Ground Lease Between Clackamas County and the Clackamas County  
Development Agency Pertaining to Property Located at 16575 SE 115<sup>th</sup> Avenue**

<b>Purpose/Outcome</b>	To finalize a ground lease pertaining to property on which the Veterans Village project is located.
<b>Dollar Amount and Fiscal Impact</b>	No change
<b>Funding Source</b>	N/A
<b>Duration</b>	Lease term to expire on September 30, 2020, with a one year automatic renewal term.
<b>Previous Board Action/Review</b>	June 26, 2018: Policy Session
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"><li>• Build public trust through good government</li><li>• Ensure safe, healthy and secure communities</li></ul>
<b>Contact Person</b>	David Queener, Agency Program Supervisor, (503) 742-4322 Rich Swift, H3S Director, (503) 650-5694

The Veterans Village project is a transitional shelter pilot project for up to 30 homeless veterans which is located on land currently owned by the Clackamas County Development Agency. Clackamas County's Department of Health, Housing and Human Services (H3S) is the department primarily responsible for the County's oversight and implementation of the project. A lease is necessary to establish the rights and responsibilities of the separate entities with regards to the activities on the property.

As currently conceived, this project is a temporary pilot project with an initial term of approximately 2 years. The lease provides for an automatic renewal period of 1 additional year unless either the County or Agency chooses not to continue with the project. The Agency shall allow the County to operate the project on the property rent-free during the term of the lease, and the County agrees to indemnify the Agency from any claims which may arise from the activities conducted on the property. At the conclusion of the lease term, the County must

remove the improvements which have been constructed on the property, unless the parties agree otherwise.

**RECOMMENDATION**

Staff recommends the Board of County Commissioners execute the attached ground lease agreement.

Sincerely,

David Queener,  
Development Agency Program Supervisor

Attachments: Ground Lease

**GROUND LEASE BETWEEN**  
**CLACKAMAS COUNTY DEVELOPMENT AGENCY**  
**AND**  
**CLACKAMAS COUNTY**

This GROUND LEASE (this “Lease”) is made and entered into on October 1, 2018 (the “Commencement Date”), by and between the Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic (“Lessor”), and Clackamas County, a political subdivision of the State of Oregon, acting through the Clackamas County Department of Health, Housing and Human Services (“Lessee”).

**RECITALS**

A. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the land depicted on Exhibit A attached hereto, together with any and all rights, privileges, easements, and appurtenances (collectively, the “Premises”), together with any and all fixtures, rights, privileges, easements, and appurtenances that may now or exist in the future (collectively, the “Improvements”).

B. Lessor owns the Premises. Lessee owns certain Improvements, shelter buildings, intended to be placed upon the Premises, more specifically described on Exhibit B, attached hereto. Lessee owns the right to use the Premises and the Improvements for the term of the Lease.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

**Article 1**

**Premises**

Lessor does hereby demise, lease, and let unto Lessee, and Lessee does hereby take and lease from Lessor, the Premises, including permission for continued use of the Improvements, for the Term (as defined below) and on the rents, conditions, and provisions herein.

## Article 2

### Lease Term

**2.1 Lease Term.** Starting on the Commencement Date, the Premises will be leased for a term of approximately two (2) years ending on September 30, 2020 (the "Term"), unless earlier terminated pursuant to the terms of this Lease. This lease is renewable for one additional one (1) year term automatically unless one party provides notice of termination pursuant to paragraph 2.2.

**2.2 Early Termination.** Notwithstanding anything in this Lease to the contrary, Lessor or Lessee may terminate the Lease upon providing the other party with written notice of intent to terminate at least 180 days prior to the desired termination date.

## Article 3

### Rent

**3.1 Payment of Rent.** Lessee shall pay Lessor no rent.

**3.2 Net Lease.** This Lease is a net lease. Lessee will be responsible for paying all costs and expenses relating to the Premises and the Improvements, including any real and personal property taxes, fees, utilities, maintenance, repairs, interior and exterior structural repairs, interior and exterior nonstructural repairs, insurance, and all other costs and expenses relating to the Premises and the Improvements. Without notice or demand and without abatement, deduction, or setoff except as may be otherwise provided in this Lease, Lessee is required to pay, all sums, impositions, costs, and other payments that Lessee assumes or agrees to pay in any provision of this Lease. If Lessee fails to make a payment, Lessor will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonpayment of rent.

## Article 4

### USE AND COMPLIANCE WITH LEGAL REQUIREMENTS

**4.1 Permitted Use.** Lessee may use and occupy the Premises and the Improvements during the Term and shall use the Premises and the Improvements in compliance with all applicable Legal Requirements (as defined in section 4.2 below).

**4.2 Compliance with Legal Requirements.** Lessee shall observe and comply with all Legal Requirements that may apply to the Premises, or to the use or manner of uses of the Premises, or the Improvements or the owners or users of the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises or the Improvements, and whether or not compliance with the Legal Requirements is required by reason of any

condition, event, or circumstance existing before or after the Term. Lessee will pay all costs of compliance with the Legal Requirements.

“Legal Requirements” means all applicable present and future laws, ordinances, orders, rules, regulations, codes, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, that now or hereafter apply to the Premises, the Improvements, or any component hereof or any activity conducted thereon, including but not limited to those pertaining to Environmental Laws and the use and storage of Hazardous Substances (as these terms are defined below).

“Environmental Laws” means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 *et seq.*), the Toxic Substances Control Act (15 USC § 2601 *et seq.*), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 *et seq.*), the Clean Air Act (42 USC § 7401 *et seq.*), amendments to the foregoing, and any rules and regulations promulgated thereunder.

“Hazardous Substances” means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

**4.3 Prohibited Uses.** Lessee shall not use or occupy the Premises or the Improvements, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied: (a) for any unlawful or illegal business, use, or purpose; (b) in any manner so as to constitute a nuisance of any kind; (c) for any purpose or in any way in violation of the certificate of occupancy, or of any Legal Requirements, including Legal Requirements respecting Hazardous Substances; or (d) for any business, use, or purpose deemed disreputable.

**4.4 No Waste.** Lessee shall not cause or permit any waste, damage, disfigurement, or injury to the Premises, but Lessee may demolish and remove any and all the Improvements on the Premises at Lessee’s own expense and pursuant to and in accordance with the terms of Article 5 below.

## **Article 5**

### **Improvements**

**5.1 Construction, Modification, and Demolition of Improvements.** Upon obtaining Lessor’s prior written approval, Lessee may, at any time and from time to time during the Term at its cost and expense, construct, reconstruct, demolish, remove, replace, remodel, or rebuild on any part or all of the Premises such buildings, structures, parking areas, driveways, walks, and other Improvements of any nature (including excavation, earthmoving, paving, installation or relocation of utilities, and all other development activities) pertaining thereto as Lessee.

Construction of any buildings or improvements will be undertaken in compliance with all Legal Requirements and will be performed in a good and workmanlike manner, and which shall be removed from the Premises prior to the end of this Lease unless renewed. Utilities installed at the Premises shall not be demolished or removed without prior written approval of the Lessor.

**5.2 Lessor Cooperation.** Lessor shall reasonably cooperate with Lessee in connection with Lessee's construction of any Improvements, including but not limited to executing any applications and other instruments reasonably necessary for construction of the Improvements at Lessee's expense, and further provided that Lessor is not required to pay any application fees or incur any other costs or liabilities in connection with the Improvements.

**5.3 Easements and Dedications.** Lessee and Lessor each recognize that in order to provide for the development of the Premises, it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power line, and other easements and dedications and similar rights be granted or dedicated over or within portions of the Premises. Lessor shall, upon request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the Term of this Lease as may be appropriate, necessary, or required by any governmental agency or public utility company for the purpose of granting such easements and dedications.

## Article 6

### Taxes and Utilities

**6.1 Taxes Defined.** As used in this Lease, the terms "Tax" and "Taxes" mean any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, or costs, general or special, ordinary or extraordinary, of any kind that are levied or at the direction of laws, rules, or regulations of any federal, state, or local authority on the Premises or the Improvements, or based on or otherwise in connection with the use, occupancy, or operations of the Premises or the Improvements, or with respect to services or utilities in connection with the use, occupancy, or operations of the Premises or the Improvements, or on Lessor with respect to the Premises or the Improvements, or on any act of leasing space in the Improvements, or in connection with the business of leasing space in the Improvements, including any tax on rents, whether direct or as a part of any "gross receipts" tax, and whether or not in lieu of, in whole or in part, ad valorem property taxes. Taxes will include, but not be limited to, state and local real-property taxes, levies, and assessments, and any tax, fee, or other excise, however described, that may be levied or assessed in lieu of, or as a substitute, in whole or in part, for, or as an addition to any other taxes, and all other governmental impositions and governmental charges of every kind and nature relating to the Premises or the Improvements, including, but not limited to, any road-user or transportation-system-maintenance fee and any charges or fees measured by trip generation or length, parking spaces, impervious surfaces, buildings, vehicle usage, or similar bases for measurement.

**6.2 Payment of Taxes.** Throughout the Term, Lessee shall pay any Taxes that may be applicable as they become due. If by law any Tax is payable, or may at the option of the taxpayer

be paid, in installments, Lessee may pay the same in installments as each installment becomes due and payable, but in any event shall do so before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.

**6.3 Contesting Taxes.** If Lessee in good faith desires to contest the validity or the amount of any Tax, Lessee may be permitted to do so by giving to Lessor written notice requesting permission to do so before commencement of such contest. If approved, Lessee may contest with respect to the Property and/or the Improvements. Lessor may, at Lessee's expense (including reimbursement of attorney fees reasonably incurred by Lessor), cooperate with Lessee in any such contest to the extent that Lessee may reasonably request, but Lessor shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Lessee, and Lessee shall indemnify and save Lessor harmless from any such costs or expenses. Any rebates on account of the Taxes required to be paid and paid by Lessee under the provisions of this Lease shall belong to Lessee, except that to the extent any rebates or refunds are related to a period of time in which this Lease is not in effect (either before commencement or after expiration or termination), the portion of the rebate attributable to such time shall be returned to Lessor to the extent previously paid by Lessor.

**6.4 Evidence of Payment.** Promptly after payment, Lessee shall provide Lessor with evidence reasonably satisfactory to Lessor that all Taxes required to be paid by Lessee have been paid.

**6.5 Utilities and Services.** Lessee shall pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other utilities and services used by Lessee on the Premises as they become due, together with any taxes thereon, from and after the Commencement Date. Lessor shall not be in default hereunder nor be liable in damages or otherwise for any failure or interruption of any utility or other service being furnished to the Premises, and no such failure or interruption will entitle Lessee to terminate this Lease.

## Article 7

### Insurance

**7.1 Fire and Casualty Insurance.** Lessee shall keep the Premises and improvements insured at Lessee's expense against fire and other risks covered by an All Risk Property Coverage policy, and other policies as appropriate. The insurance shall be maintained (without any co insurance clause) in an amount equal to the greater of the fair market value of the Premises and improvements or the amount required by any mortgagee of the Premises, or absent such requirement, in an amount sufficient to prevent Lessor and Lessee from becoming co insurers under applicable provisions of the insurance policy. Said coverage may be through self-insurance, through an insurance pool established for the benefit of governmental entities or from a general insurance carrier that meets the requirements set out below.

**7.2 Liability Insurance.** Lessee, at its cost and expense, shall maintain general liability insurance coverage sufficient to cover liability that may be imposed due to the condition of the

premises and the activities conducted thereon. Said coverage may be through self-insurance, through an insurance pool established for the benefit of governmental entities or from a general insurance carrier that meets the requirements set out below.

**7.3 Additional Requirements.** In the event that a policy is obtained from a commercial carrier the carrier(s) shall be a reputable insurance company acceptable to Lessor, licensed to do business in the State of Oregon, and have a minimum A-VIII rating as determined by the then-current edition of *Best's Insurance Reports* published by A.M. Best Co. Lessee shall provide Lessor with certificates of insurance concurrently with the execution of this Lease and upon each renewal thereafter to establish that Lessee's insurance obligations have been met and that the policies are not subject to cancellation or material change without at least 30 days advance written notice to Lessor; provided, however, that Lessor may inspect and require full copies of all insurance policies to be provided to Lessor.

## Article 8

### Release and Indemnification

**8.1 Release.** Lessee shall be in exclusive control of the Premises, and Lessor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Lessee owned or leased Improvements, or any injury or damage to the Premises or the Lessee owned Improvements or to any property, whether belonging to Lessee or to any other person, caused by any fire, breakage, leakage, defect, or condition on any part of the Premises or the Lessee owned or leased Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Lessee owned or leased Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or because of the use, misuse, or abuse of all or any of the Premises or the Lessee owned or leased Improvements, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Lessee owned or leased Improvements, including defects in construction of the Lessee owned or leased Improvements, latent or otherwise; and Lessee hereby releases Lessor from and against any and all liabilities resulting from any such injuries and damages. Lessor acknowledges that it remains responsible for liability to any third party to the extent that the liability arises from Lessor's gross negligence or willful misconduct that causes damage or injury to persons or property on the Premises.

**8.2 Indemnification.** Except to the extent caused by the gross negligence or willful misconduct of Lessor, Lessee shall indemnify, defend and hold Lessor harmless from and against any and all liabilities, obligations, damages, fines, penalties, claims, costs, except for attorney's fees, charges, and expenses (including, without limitation, environmental response and remedial costs; environmental consultant and laboratory fees; and natural resource damages) that may be imposed on or incurred by or asserted against Lessor arising from or related to the activities of the Lessee conducted on the Premises during the term of this Lease.



## Article 9

### Liens

**9.1 No Liens.** Lessee shall not suffer or permit any construction liens to attach to or be filed against any part of the Premises or the Improvements owned by Lessor by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or any person occupying or holding an interest in any part of the Premises or the Improvements owned by Lessee. If any such lien is filed against any portion of the Premises or the Improvements, Lessee shall cause the same to be discharged of record within 15 days after the date of its filing by payment, deposit, or bond.

**9.2 Lessor Right to Post Notices.** Lessor may post and keep posted at all reasonable times on the Premises and the Improvements notices of non-responsibility and any other notices that Lessor desires or is required to post for the protection of Lessor's interest in the Premises and the Improvements from any such lien.

**9.3 No Right to Lien Lessor's Interest.** Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of Lessor, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Lessor's interest in the Premises or against Lessor's interest, if any, in the Improvements. Lessee shall not be an agent for Lessor.

## Article 10

### Repairs and Maintenance

**10.1 Lessee Obligation.** Lessee must maintain, repair and replace the Premises and the Lessor owned Improvements as and when needed so as to keep them clean and in good condition and repair, throughout the entire Term. Lessee's obligations extend to both structural and nonstructural items and to all maintenance, repair, and replacement work.

**10.2 Lessor Obligation.** Consistent with Section 6.5 of this Lease, Lessor is not required to furnish to Lessee, the Premises, or the Improvements any facilities, utilities, or services of any kind whatsoever during the Term, such as, but not limited to, water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, or any other utilities or services used by Lessee. Lessor is not required to make any alterations, re-buildings, replacements, changes, additions, improvements, or repairs to any portion of the Premises or the Improvements during the Term.

**10.3 Lessee Environmental Obligations.** Lessee shall take all the responsibilities to environmental issues and damages on the Premises and the Improvements related to its activities.

**10.4 Limited Assignment of Rights.** Lessor shall assign to Lessee, without recourse, any rights that Lessor may have against any parties causing damage to the Lessee owned Improvements on the Premises to sue for and recover amounts expended by Lessee as a result of the damage.

## **Article 11**

### **Inspection and Access**

Lessor may enter onto the Premises and the Improvements at reasonable times during reasonable business hours for the purposes of allowing potential buyers or tenants to perform inspections, to inspect and take measurements, samples or other activities to access any potential contamination issues and ensure compliance with the terms of this Lease. Nothing in this Lease implies any duty or obligation, however, on Lessor's part to make such inspections or perform such work (including, but not limited to, repairs and other restoration work made necessary because of any fire or other casualty or partial condemnation, irrespective of the sufficiency or availability of any property or other insurance proceeds, or any award in condemnation, that may be payable). Lessor's performance of any work will not constitute a waiver of Lessee's default in failing to perform the same.

## **Article 12**

### **Damage and Destruction**

If any Lessee owned Improvement(s) on the Premises are damaged or destroyed by flood, fire or other casualty, Lessee's obligations under the lease will not abate and Lessee shall promptly determine whether to repair, replace, reconstruct, demolish or abandon the Improvement(s). Lessee shall promptly inform Lessor of its decision and its proposed plan of action. Should the Lessee decide to abandon or demolish the damaged Lessee owned Improvement(s) Lessee shall at Lessee's expense clear the remains of the Improvement(s) from the premises unless otherwise directed by Lessor.

## **Article 13**

### **Condemnation**

**13.1 Total Taking.** If all the Premises and the Improvements are taken or condemned by right of eminent domain or by purchase in lieu of condemnation (a "Taking"), or if in Lessee's reasonable judgment the Taking of any portion of the Premises or the Improvements renders the portion remaining insufficient and unsuitable to permit the restoration of the Improvements following the Taking, then Lessee may terminate this Lease by providing written notice thereof to Lessor within 30 days after Lessee is notified of the Taking, in which case the Lease will cease and terminate (except those provisions intended to survive the expiration or termination of the Lease) and Lessee shall vacate the Premises and the Improvements as of the date on which the condemning authority takes possession (any Taking in this section being called a "Total Taking").

**13.2 Award for Total Taking.** If this Lease terminates as a result of a Total Taking, the rights and interests of the parties will be determined as follows:

(a) The total award or awards for the Total Taking will be apportioned and paid in the following order of priority:

(i) Lessor will have the right to receive directly from the condemning authority, in its entirety and not subject to any trust, a portion of the award that is defined and referred to as the Land Award (as defined below), and Lessee will not be entitled to receive any part of the Land Award. The term "Land Award" means that portion of the award in the condemnation proceeding that represents the fair market value of the Premises and the Lessor owned Improvements, the consequential damage to any part of the Premises that may not be taken; the diminution of the assemblage or plottage value of the Premises not so taken; and all other elements and factors of damage to the Premises; but in all events the damage or valuation will take into consideration that the Premises are encumbered by this Lease.

(ii) Lessee will have the right to receive directly from the condemning authority that portion of the award referred to as the Leasehold Award (as defined below). The term "Leasehold Award" means that portion of the award in the condemnation proceeding that represents the fair market value of Lessee's interest in the Premises and the Lessee owned Improvements and the fair market value of Lessee's leasehold estate as so taken and, if this Lease is not terminated as a result of the Taking.

(iii) It is the intent of the parties that the Land Award and the Leasehold Award will equal the total amount of the awards respecting the Total Taking.

(b) If a court or another lawful authority that is authorized to fix and determine the awards fails to fix and determine, separately and apart, the Land Award and the Leasehold Award, the awards will be determined and fixed by written agreement mutually entered into by and among Lessor and Lessee, and if an agreement is not reached within 30 days after the judgment is entered in the proceeding, the controversy will be resolved in the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the controversy.

**13.3 Partial Taking and Award for Partial Taking.** If, during the Term, there is a Taking of the Premises or the Improvements, but the Taking is not a Total Taking and not a temporary taking of the kind described in section 13.4, or if a change occurs in the grade of the streets or avenues on which the Premises abuts, this Lease will not terminate but will remain in full force and effect with respect to the portion of the Premises and the Improvements not taken (any Taking or change of grade of the kind described in this section being referred to as a "Partial Taking"), and in that event the total award or awards for the taking will be apportioned and paid in the following order of priority:

(a) Lessor may receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award, and Lessee may not receive any part of the award; and

(b) Lessee, may receive directly from the condemning authority the balance of the award, to be applied by the recipient as it deems appropriate.

**13.4 Temporary Taking.** If there is a Taking of all or a part of the Premises or the Improvements for temporary use, this Lease will continue without change, as between Lessor and Lessee, and Lessee will be entitled to the entire award made for that use. Lessee will also have the right to file and prosecute any claim against the condemnor for damages, and to recover the same, for any negligent use, waste, or injury to the Premises or the Improvements throughout the balance of the then-current Term. The amount of damages so recovered will belong to Lessee.

**13.5 Dispute Resolution.** In the event of any dispute between Lessee and Lessor regarding any issue of fact arising out of a Taking mentioned in this Article, the dispute shall be resolved by the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the dispute.

## Article 14

### Assignment and Subletting

**14.1 Limitations on Transfers.** Except as permitted under section 14.2 and article 16 below, Lessee shall not, voluntarily or by operation of law, sell, assign, or transfer this Lease or any interest therein, sublet the Premises or any part thereof, or grant any right to use the Premises, the Improvements, or any respective part thereof (each a "Transfer") without the prior written consent of Lessor. Any attempted Transfer without such prior written consent will be void. Lessor's consent to a Transfer will in no event release Lessee, any assignee, or any guarantor from their respective liabilities or obligations under this Lease or any guaranty of this Lease, nor relieve Lessee from the requirement of obtaining Lessor's prior written consent to any further Transfer. Lessor's acceptance of Rent from any other person will not be deemed to be a waiver by Lessor of any provision of this Lease or consent to any Transfer.

**14.2. Assignments Prohibited.** An assignment prohibited within the meaning of this section 14.1 includes, without limitation, one or more sales or transfers, direct or indirect, by operation of law or otherwise.

## Article 15

### Lessor Mortgages

**15.1 Lessor Mortgages.** Lessor shall not, at any time, borrow against or encumber its interest in the Premises, or this Lease. Lessee may borrow against the Lessee owned Improvements so long as the term of such debt will end prior to the Term of this Lease, and further that if any

claim or security interest is asserted against the Lessee owned Improvements, that Lessee shall not suffer the same but pay fully such debt and remove any claim or security interest on the Lessee owned Improvements fully before the Term of the Lease expires. If Lessor exercises its right of early termination, then Lessee shall be obligated to remove the security interest or other encumbrance prior to the termination date of the Lease as so established.

## **Article 16**

### **Default**

**16.1 Event of Default.** The occurrence of any one or more of the following constitutes an event of default under this Lease:

- (a) Failure by Lessee to pay any amount required to be paid by Lessee to Lessor under this Lease within 10 days after written notice of such nonpayment is given to Lessee;
- (b) Failure by Lessee to obtain and maintain any insurance or provide evidence of insurance as required by the terms of this Lease and such failure continues and is not remedied within 10 days after written notice thereof is given to Lessee;
- (c) Failure by Lessee, whether by action or inaction, to comply with any term or condition or fulfill any obligation under this Lease (other than as set forth in subsections (a) and (b) above) and such failure continues and is not remedied within 30 days after written notice thereof is given to Lessee;
- (d) Lessee becomes insolvent; Lessee makes an assignment for the benefit of creditors; Lessee files a voluntary petition in bankruptcy; Lessee is adjudged bankrupt or a receiver is appointed for Lessee's properties; the filing of any involuntary petition of bankruptcy and Lessee's failure to secure a dismissal of the petition within 45 days after filing; or the attachment of or the levying of execution on the leasehold interest and Lessee's failure to secure discharge of the attachment or release of the levy of execution within 30 days; or
- (e) Lessee has a material breach as described in section 3.2, which shall be deemed as a breach without any cure period set forth in provision (c) of this article.

## **Article 17**

### **Remedies**

**17.1 Remedies.** Upon the occurrence of an event of default, Lessor may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

- (a) Lessor may terminate this Lease by written notice to Lessee, which is effective immediately.
- (b) Lessor or Lessor's agent or employee may immediately or at any time thereafter, without terminating the Lease, reenter the Premises and the Improvements (as provided in Section 19) either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises and the Improvements, to the end that Lessor may have, hold, and enjoy the Premises and the Improvements. **RE-ENTRY OR TAKING POSSESSION OF THE PREMISES OR THE IMPROVEMENTS BY LESSOR WILL NOT BE CONSTRUED AS AN ELECTION ON ITS PART TO TERMINATE THIS LEASE UNLESS A WRITTEN NOTICE OF SUCH INTENTION IS GIVEN TO LESSEE.**
- (c) Lessor may, without terminating the Lease, relet the whole or any part of the Premises and the Lessor owned Improvements from time to time, either in the name of Lessor or otherwise, to any persons, for any terms ending before, on, or after the expiration date of the Term, at any rentals and on any other conditions (including concessions and free rent) that Lessor determines to be appropriate. To the extent allowed under Oregon law, Lessor may not relet all or any part of the Premises or the Lessor owned Improvements and shall not be liable for refusing to relet the Premises or the Lessor owned Improvements, or, in the event of reletting, for refusing or failing to collect any rent due on such reletting; and any action of Lessor will not operate to relieve Lessee of any liability under this Lease or otherwise affect such liability. Lessor at its option may make any physical change to the Premises or the Lessor owned Improvements that Lessor, in its sole discretion, considers advisable and necessary in connection with any reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.
- (d) Whether or not Lessor retakes possession of or relets the Premises and the Lessor owned Improvements, Lessor may recover its damages, including without limitation, all lost rentals and all costs incurred by Lessor in restoring the Premises or otherwise preparing the Premises and for reletting, and all costs incurred by Lessor in reletting the Premises.
- (e) To the extent permitted under Oregon law, Lessor may sue periodically for damages as they accrue without barring a later action for further damages. Lessor may in one action recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Rent (including Taxes) reserved in this Lease for the balance of the Term after the time of award and the fair rental value of the Premises and the Lessor owned Improvements for the same period, discounted at the time of award at a reasonable rate not to exceed 10 percent per annum. If Lessor relets the Premises and the Lessor owned Improvements for the period that otherwise would have constituted all or part of the unexpired portion of the Term, the amount of rent reserved on the reletting will be deemed to be the fair and reasonable rental value for the part or the whole of the Premises and the Improvements so relet during the term of the reletting.

**17.2 Lessor's Self-Help Right.** If Lessee at any time (a) fails to pay any Tax in accordance with the provisions of this Lease, (b) fails to make any other payment required under this Lease, or (c) fails to perform any other obligation on its part to be made or performed under this Lease, then after 10 days' written notice to Lessee (or without notice in the event of an emergency) and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor's right to take any action that is permissible under this Lease as a result of the default, Lessor may, (i) pay any Tax or make any other payment required of Lessee under this Lease, and (ii) perform any other act on Lessee's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take any action that may be necessary. All payments so made by Lessor and all costs and expenses incurred by Lessor in connection with the performance of any such act will constitute additional costs payable by Lessee under this Lease and must be paid to Lessor on demand. In no instance shall Lessee be entitled to attorney's fees relating to any default, remedy or self-help, even if it is determined that Lessor did not act appropriately with respect to the same.

**17.3 No Waiver.** No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, may be waived, altered, or modified except by a written instrument executed by Lessor. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

**17.4 Remedies Cumulative and Nonexclusive.** Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise, and Lessor's or Lessee's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

## Article 18

### Sale By Lessor and Limitation of Lessor's Liability

**18.1 Sale by Lessor.** Upon sale of the Premises during the Term of this Lease or any extensions, this Lease shall be terminated. Lessor shall not agree to any sale terms that shorten the notice of termination period required to be given to Lessee in section 2.2.

**18.2 Nonrecourse Obligation.** Regarding any claim against Lessor, including any claim of default by Lessor under this Lease or in any claim or cause of action arising under this Lease or arising out of the Lessor-Lessee relationship created by this Lease, the sole and exclusive remedy

of Lessee shall be against the interests of Lessor in the Premises and its reversionary interest in the Lessor owned Improvements and Lessor will have no other liability hereunder. Lessee shall not enforce any judgment against Lessor except against the interest of Lessor in the Premises and its reversionary interest in the Lessor owned Improvements. In no event will any elected official, officer, employee, or agent of Lessor have any personal liability to Lessee. Lessee agrees that this provision will apply to any and all liabilities, claims, and causes of action whatsoever, including those based on any provision of this Lease, any implied covenant, or any statute or common-law principle. Notwithstanding any other provision of this Lease, in no event whatsoever may Lessor be responsible for any consequential or incidental damages or for any action that Lessor believes in good faith is necessary to comply with Legal Requirements with respect to the Premises or the Improvements.

## **Article 19**

### **Surrender and Holdover**

**19.1 Condition of Premises and Improvements.** Upon expiration of the Term or earlier termination of this Lease, Lessee shall deliver to Lessor the Premises in good condition, free and clear of all occupancies other than subleases to which Lessor has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Lessor. Lessee shall surrender the Premises and the Lessor owned Improvements in good condition and repair (reasonable wear and tear excepted), free and clear of all occupancies other than subleases to which Lessor has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Lessor.

**19.2 Lessee's Property.** Before the expiration or earlier termination of this Lease, Lessee shall remove all Lessee owned Improvements, furnishings, furniture, and trade fixtures that remain Lessee's property (the "Lessee's Property"). If Lessee fails to do so, at Lessor's option, (a) the failure to remove Lessee's Property will be deemed an abandonment of Lessee's Property, and Lessor may retain Lessee's Property and all rights of Lessee with respect to it will cease; or (b) by written notice given to Lessee, Lessor may elect to hold Lessee to Lessee's obligation of removal, in which case Lessor may effect the removal, transportation, and storage of Lessee's Property and Lessee shall reimburse Lessor for the costs incurred in connection therewith on demand.

## **Article 20**

### **Condition of Premises**

Lessee acknowledges that it has examined the physical condition of the Premises (including whether the Premises contains any Hazardous Substances or fails to comply with any Environmental Laws) and as a result agrees to accept the Premises in "as-is" condition, with all faults. Lessee further acknowledges that no representations or warranties regarding the condition of the Premises have been made by Lessor or any agent or person acting for Lessor.



## Article 21

### Quiet Enjoyment

On paying the Rent and adhering to all covenants, agreements, and conditions of this Lease, Lessee will have quiet enjoyment of the Premises during the Term without hindrance or disturbance by any person claiming by, through, or under Lessor, subject, however, to the Permitted Exceptions.

## Article 22

### Notices

**22.1 Notice Parties and Means of Delivery.** Any notice required or permitted by the terms of this Lease will be deemed given if delivered personally, sent by United States registered or certified mail, postage prepaid, return receipt requested, or sent by fax with electronic confirmation of fax receipt, and addressed as follows:

If to Lessor:                   Clackamas County Development Agency  
  150 Beaver Creek Rd., Oregon City, OR 97045  
  Attn: Dan Johnson

With a copy to:               Clackamas County Counsel's Office  
  2051 Kaen Rd., Oregon City, OR 97045

If to Lessee:                   Clackamas County  
  Department of Health, Housing, and Human Services  
  2051 Kaen Rd., Oregon City, OR 97045  
  Attn.: Richard Swift

With a copy to:               Clackamas County Counsel's Office  
  2051 Kaen Rd., Oregon City, OR 97045

**22.2 Copies of Certain Notices to Lessee.** Lessee shall immediately send to Lessor, in the manner prescribed in this Article, copies of all notices that Lessee gives to or receives with respect to the Premises or the Improvements from any entity that impacts the Premises, including but not limited to any government authority, fire regulatory agency, or similarly constituted body, and copies of its responses to those notices.

**22.3 Failure to Notify of Change of Address or Refusal to Accept a Notice.**

Notwithstanding anything in this Article to the contrary, any notice mailed to the last-designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this Article shall not be deemed ineffective if actual delivery cannot be made because of a change of address of the person or party to which the notice is directed or the failure or refusal of such a person or party to accept delivery of the notice.

## Article 23

### Miscellaneous

**23.1 Survival.** All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required before the expiration or earlier termination of this Lease, will survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

**23.2 Invalidity.** If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

**23.3 Force Majeure.** If either party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, terrorism, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.

**23.4 Nonmerger.** There may be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease, may be held, directly or indirectly, by or for the account of any person who owns the fee estate in the Premises or any interest in such fee estate. No merger will occur unless and until all persons having an interest in the fee estate in the Premises and all persons (including all Permitted Leasehold Mortgagees) having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting the merger and duly record the same.

**23.5 Lease Documents and Expenses.** This Lease shall be prepared by Lessor. Lessor shall be responsible for its own costs of legal review and documentation, and Lessee shall be responsible for its own costs of legal review and documentation in the drafting and execution of this Lease.

**23.6 Entire Agreement; Counterparts.** This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Lessee and Lessor mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of

counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

**23.7 Applicable Law.** This Lease will be governed by, and construed in accordance with, the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

**23.8 Brokerage.** Lessor and Lessee represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other.

**23.9 Binding Effect.** The covenants and agreements contained in this Lease are binding on and inure to the benefit of Lessor, Lessee, and their respective successors.

**23.10 Recordation of Lease.** Lessee may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both parties, be recorded in the public records of Clackamas County, Oregon. Lessee will pay the recording costs.

**23.11 Time Is of the Essence.** Time is of the essence as to the performance of all the covenants, conditions, and agreements of this Lease.

**23.12 Interpretation.** In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease may be construed against either party hereto. Lessor and Lessee acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party will not be used in the interpretation of this Lease or any exhibit or amendment hereto.

**23.13 Headings, Captions, and References.** The headings and captions contained in this Lease are for convenience only and do not in any way define, describe, limit, or amplify the scope or intent of this lease or any term or provision in it. The use of the term “Herein” refers to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of a masculine or neutral gender in this Lease includes the masculine, feminine, and neutral genders and the singular form includes the plural when the context so requires.

**23.14 Relationship of Parties.** Nothing contained in this Lease is to be deemed or construed, either by the parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Lessor and Lessee.

**23.15 USA PATRIOT Act Compliance.** Lessee represents to Lessor that Lessee is not (and is not engaged in this transaction on behalf of) a person or entity with which Lessor is prohibited from doing business pursuant to Antiterrorism Laws. “Antiterrorism Laws” means any law, regulation, or executive order pertaining to national security and specifically includes, but is not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the PATRIOT Act) (Pub L 107-56, 115 Stat 272); the Bank Secrecy Act (31 USC § 5311 *et seq.*); the Trading with the Enemy Act (50 USC App

§ 1 *et seq.*); the International Emergency Economic Powers Act (50 USC §§ 1701–1706); sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws related to the prevention and detection of money laundering in 18 USC sections 1956 to 1957. Lessee hereby agrees to indemnify, defend, and hold Lessor harmless from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney fees and costs at trial and on appeal) arising from or related to any breach of the foregoing warranty, representation, and certification. Following a Transfer, Lessee will cause the transferee (including, but not limited to, an assignee, sublessee, and licensee), for the benefit of Lessor, to reaffirm, on behalf of such transferee, the representations of, and to otherwise comply with the obligations set forth in this section 29.15, and it is reasonable for Lessor to refuse to consent to a Transfer in the absence of such reaffirmation and compliance.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Lessee and Lessor have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

CLACKAMAS COUNTY  
DEVELOPMENT AGENCY

/s/ \_\_\_\_\_,

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

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

Title: Chair

CLACKAMAS COUNTY

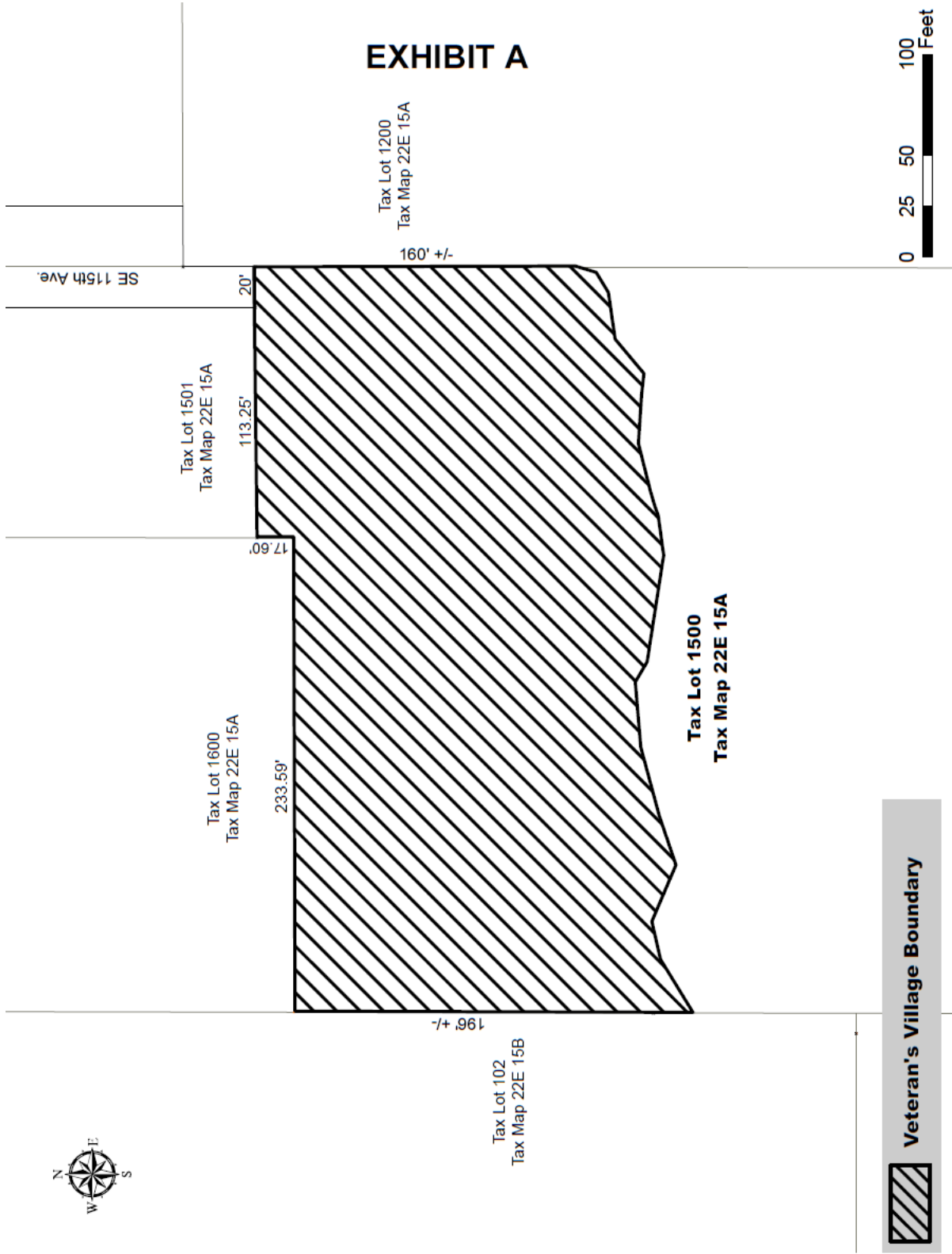
/s/ \_\_\_\_\_,

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

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

Title: Chair

# EXHIBIT A



## **EXHIBIT B**

### **Lessee Owned Improvements**

- Up to 30 sleeping pods
- Bathroom and kitchen facilities
- ADA accessibility improvements
- Power poles