

**DEVELOPMENT AGREEMENT BETWEEN
BTC III GRAHAMS FERRY 1C LLC AND
THE CITY OF WILSONVILLE, OREGON**

This Development Agreement (“Agreement”) is entered into by and between the **City of Wilsonville**, an Oregon municipal corporation (“City”), and **BTC III Grahams Ferry 1C LLC**, a Delaware limited liability company (“Developer”). The effective date of this Agreement is the _____ day of _____ 2022 (“Effective Date”). The City and Developer may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. Developer proposes to construct an industrial development consisting of an approximately 150,000 square-foot warehouse/manufacturing building with accessory office space on certain real property located within the Coffee Creek Industrial District, described and depicted on the map attached hereto and incorporated herein as **Exhibit A** (“Developer Property”).
- B. The City approved the required land use reviews (DB21-85, DB21-86, DB21-87, DB21-88, DB21-89, and DB21-90, the “Land Use Approvals”) for an industrial development on Developer’s Property (“Development”). The Development includes, but is not limited to, the following improvements: An approximately 148,279 SF speculative warehouse/manufacturing facility with accessory office space designed to meet the needs of high-cube parcel fulfillment center sort warehouse facility that could also be suitable for more traditional warehousing or for a mix including some uses in the manufacturing category. The Land Use Approvals also require Developer to construct certain public improvements (“Developer Public Improvements”), which are generally described as follows: public roadway and street lighting, public water and storm utility, and private street improvements. The Development and Developer Public Improvements are depicted in **Exhibit B** attached hereto and incorporated herein.
- C. Wilsonville Code (WC) 11.080 requires Developer to pay certain Systems Development Charges (SDCs) upon issuance of a building permit for the Development. For Transportation SDCs (TSDCs), the City calculates the fee based on the type of use and different uses result in different amounts of TSDCs owed to the City.
- D. The Land Use Approvals determined that the Development’s use was speculative and approved a range of suitable industrial uses, including warehouse and manufacturing uses, among other uses. The use of the Development and tenants are not yet confirmed.

AGREEMENT

In consideration of the foregoing Recitals, and incorporating all of the above Recitals by reference in this Agreement as if fully set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all of the above-named Parties agree as follows:

I. NEW DEVELOPMENT

Developer intends to construct the Development, which consists of a building for industrial use and other public improvements within the Coffee Creek Industrial District. The Development has been approved by the City's Development Review Board under the Land Use Approvals, and Developer is currently in the permitting processes required by the City for industrial development. Developer will pay all fees required by the City for such industrial development, including SDCs, in order to obtain the appropriate permits to move forward with the Development ("Development Permits").

Section 1.1 – TSDC Calculation

Based on Developer's representation that it does not yet have a confirmed tenant for its building, the City agrees to apply the "warehouse" classification, described as Land Use 150 in the Institute of Transportation Engineers ("ITE") Manual (10th edition, Land Use 150), to calculate the TSDCs payable for the Development. This TSDC determination will be subject to proportional correction and true-up to manufacturing classification (ITE Land Use 140), or other relevant classification, to the extent that the warehouse criteria are not met at build-out or when a future tenant occupies the Development and uses the Development, or part of the Development, in a manner inconsistent with the warehouse classification. If a true-up occurs, the TSDC rate in effect at the time of recalculation will apply.

II. DEVELOPER'S PUBLIC IMPROVEMENTS (Developer Obligations to Construct Public Improvements)

Section 2.1 – Description of Developer Public Improvements

Developer agrees to construct, or cause to be constructed, the Development and certain Developer Public Improvements, as depicted in **Exhibit B**, in accordance with the Land Use Approvals. Developer is responsible for constructing and installing all infrastructure, utilities, and other improvements as required under the City of Wilsonville City Code and conditions of approval for the Development's Land Use Approvals.

Section 2.2 – Developer Improvement Costs

The Developer Public Improvements shall be constructed by Developer at Developer's sole expense. The Developer Public Improvements must be completed, inspected by the City,

and deemed complete by the City before the City will issue any temporary occupancy permits for the Development.

Section 2.3 – SDC Credit/Refund of Expense

The Parties anticipate that Developer may be entitled to Water SDC (WSDC) credits related to Developer's construction of water system improvements that are SDC credit eligible improvements pursuant to WC 11.100. Given the unique nature of the Development, and considering that Developer's use of WSDC credits in the future is unlikely, the City is willing to provide a refund check for WSDCs up to the amount of WSDCs paid by Developer, in lieu of issuing credits ("WSDC Refund"). Developer may apply, pursuant to WC 11.100, for WSDC credits above and beyond the amount of the WSDC Refund for any remaining Developer costs that are WSDC credit eligible. Developer must submit a request for WSDC credits or WSDC Refund to the City within ninety (90) days of written acceptance of the water system public improvements by the City. A cover page invoice with Developer's letterhead shall accompany the request for WSDC credits or WSDC Refund. Developer must submit sufficient documentation for specific costs related to construction of such improvements and in a format acceptable to the City. Developer shall also submit a signed letter of completion certifying payment in full to all subcontractors and suppliers. If Developer fails to submit an acceptable request for WSDC credit or WSDC Refund within ninety (90) days from the City's written acceptance issuance date, Developer forfeits its right to receive the WSDC credit or refund unless the Parties agree otherwise in writing.

2.3.1. SDC Refund.

If Developer submits a request for WSDC Refund, and the City approves the request, the City agrees to issue a refund check to Developer for the amount that is SDC credit-eligible, up to the amount of WSDCs that Developer paid. The Parties acknowledge that Developer may be entitled to additional WSDC credits beyond the WSDC Refund, which Developer may apply to receive such credits pursuant to WC 11.100 and this Agreement.

2.3.2. SDC Refund Payment.

The City will pay any WSDC Refund within thirty (30) days of approving the final construction costs, provided there is mutual agreement on the costs. The review of the construction costs will be done in accordance with WC 11.100(4). If there is a disagreement on any or all of the costs, the disputed sum(s) may be withheld until such time as any such disagreement is resolved, which dispute resolution must be done in accordance with Section III herein. If all or any portion of withheld sum(s) are determined to be owing to Developer through the dispute resolution process, those sum(s) will be paid within seven (7) days of resolution.

Section 2.4 – Developer Bonds

Prior to commencement of construction of the Developer Public Improvements, Developer must provide to the City performance and payment bonds on the form attached as **Exhibit C**. Prior to commencement of construction of the Developer Public Improvements, Developer shall also cause the City to be named as an additional insured on the applicable contractor's insurance policy for the construction of the Developer Public Improvements in amounts and coverages reasonably satisfactory to the City.

III. DISPUTE RESOLUTION

Section 3.1 – Mediation

All disputes arising out of this Agreement shall first be submitted to mediation. Any Party desiring mediation shall provide the other Party with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The Parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the Parties, in the Parties' sole discretion, within twenty (20) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon in writing by the Parties, any Party may make demand for arbitration pursuant to the following paragraph.

Section 3.2 – Arbitration or Litigation

Any dispute that is not resolved through mediation, upon mutual agreement of the Parties may be submitted to arbitration, to be conducted in Wilsonville, Oregon before a single arbitrator selected by mutual agreement of the Parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the Parties are unable to mutually agree upon and select an arbitrator within twenty (20) days, then any Party may file an action in Clackamas County Circuit Court in lieu of arbitration and there will be no obligation to arbitrate unless otherwise required by Oregon law. If arbitrated, judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

Section 3.3 – Equitable Remedies

Even if the Parties undergo mediation or arbitration, the City may still request immediate equitable remedies of either specific performance or injunctive relief to occur while mediation or arbitration is pending or ongoing. The Parties will otherwise agree to abate the court case pending completion of the mediation or arbitration.

IV. RECORDING

This Agreement runs with Developer's land that is subject to this Agreement, as identified in **Exhibit A**. Either this Agreement or a memorandum of this Agreement will be recorded by the City with the Clackamas County Recorder's Office for all real property subject to this Agreement.

V. TERMINATION

This Agreement shall terminate at the time of the final decision and payment of any WSDC credits or WSDC Reimbursement for which Developer applied within the applicable time period under Section 2.3. Upon termination, the City shall, if requested by Developer, issue a notice of termination to be recorded on the Developer Property stating that this Agreement has terminated.

VI. MISCELLANEOUS PROVISIONS

Section 5.1 – Further Assurances

Each Party will cooperate and perform such acts and things reasonably necessary in connection with the performance of its obligations hereunder, in good faith to carry out the intent of the Parties hereto. Developer understands and agrees that no occupancy permit will be granted for the Development until the Developer Public Improvements have been completed and approved by the City as meeting the requirements set forth herein.

Section 5.2 – Modification or Amendment

No amendment, change, or modification of this Agreement will be valid unless in writing and signed by the Parties hereto.

Section 7.3 – Relationship

Nothing herein may be construed to create an agency relationship or a partnership or joint venture between the Parties.

Section 7.4 – Maintenance

Developer is responsible for maintenance of the Developer Public Improvements as provided in the 2017 City of Wilsonville Public Works Standards, Section 101.8.18 *Maintenance and Warranty*, and any amendments thereto. Developer remains responsible for submitting a maintenance bond, per Public Works Standards, to the City for all of its required Developer Public Improvements within the public right-of-way or public easements. If Developer fails to maintain the Developer Public Improvements during the applicable period, the City may do so and make a claim on the bond and directly against Developer. Any work required to be performed by the City will bear interest at a rate of twelve percent (12%) per annum.

Section 7.5 – Burden and Benefit

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

Section 7.6 – No Continuing Waiver

The waiver by any Party of any breach of this Agreement will not operate or be construed to be a waiver of any subsequent breach.

Section 7.7 – Applicable Law

This Agreement shall be governed by and construed under the laws of the State of Oregon. Jurisdiction is in Clackamas County, Oregon.

Section 7.8 – Legal Fees

If any Party commences legal proceedings, including arbitration or bankruptcy, for any relief against any other Party arising out of or related to this Agreement, or the breach thereof, each Party shall pay its own legal costs and expenses, including, but not limited to, arbitration costs, attorney fees, and expert witness fees, at the trial level or on any appeal.

Section 7.9 – Time of Essence

Time is expressly declared to be of the essence of this Agreement.

Section 7.10 – Notices

All notices, demands, consents, approvals, and other communications which are required or desired to be given by any Party to each other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three (3) days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City: City of Wilsonville
Attn: Amanda Guile-Hinman, City Attorney
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Developer: BTC III Grahams Ferry 1C LLC
Attn: Jonathan Linker
4675 Mac Arthur Court Suite 625
Newport Beach, CA 92660

Section 7.11 – Rights Cumulative

All rights, remedies, powers, and privileges conferred under this Agreement on the Parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

Section 7.12 – Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Section 7.13 – No Third-Party Beneficiaries and No Assignment

None of the duties and obligations of any Party under this Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the Parties hereto or their respective heirs, successors, and assigns. Developer may not assign its rights under this Developer Agreement without the prior express written consent of the City.

Section 7.14 – Representations and Warranties

Each Party signing on behalf of Developer and the City hereby warrants actual authority to bind their respective Party. The Parties signing below also hereby warrant that entry into this Agreement and the enforcement of its terms will not violate any loan covenants or other agreements pertaining to any of the land or improvements impacted hereby.

Section 7.15 – Legal Review

All of the Parties to this Agreement hereby affirm that they have been represented in the negotiation hereof by their own independent legal counsel, who have reviewed this Agreement and advised their respective client concerning the same. Therefore, it shall be interpreted accordingly and shall not be construed against the drafter.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the day and year first written above.

BTC III GRAHAMS FERRY 1C LLC,
a Delaware limited liability company

By: Build-To-Core Industrial Partnership III LLC,
a Delaware limited liability company,
Its: Sole Member

By: BCG BTC III Managing Member LLC,
a Delaware limited liability company
Its: Investment Managing Member

By: _____
Print Name: _____
As Its: _____

CITY OF WILSONVILLE,
a municipal corporation of the State of Oregon

By: _____
Bryan Cosgrove
As Its: City Manager

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney

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EXHIBIT A

Description of Developer Property

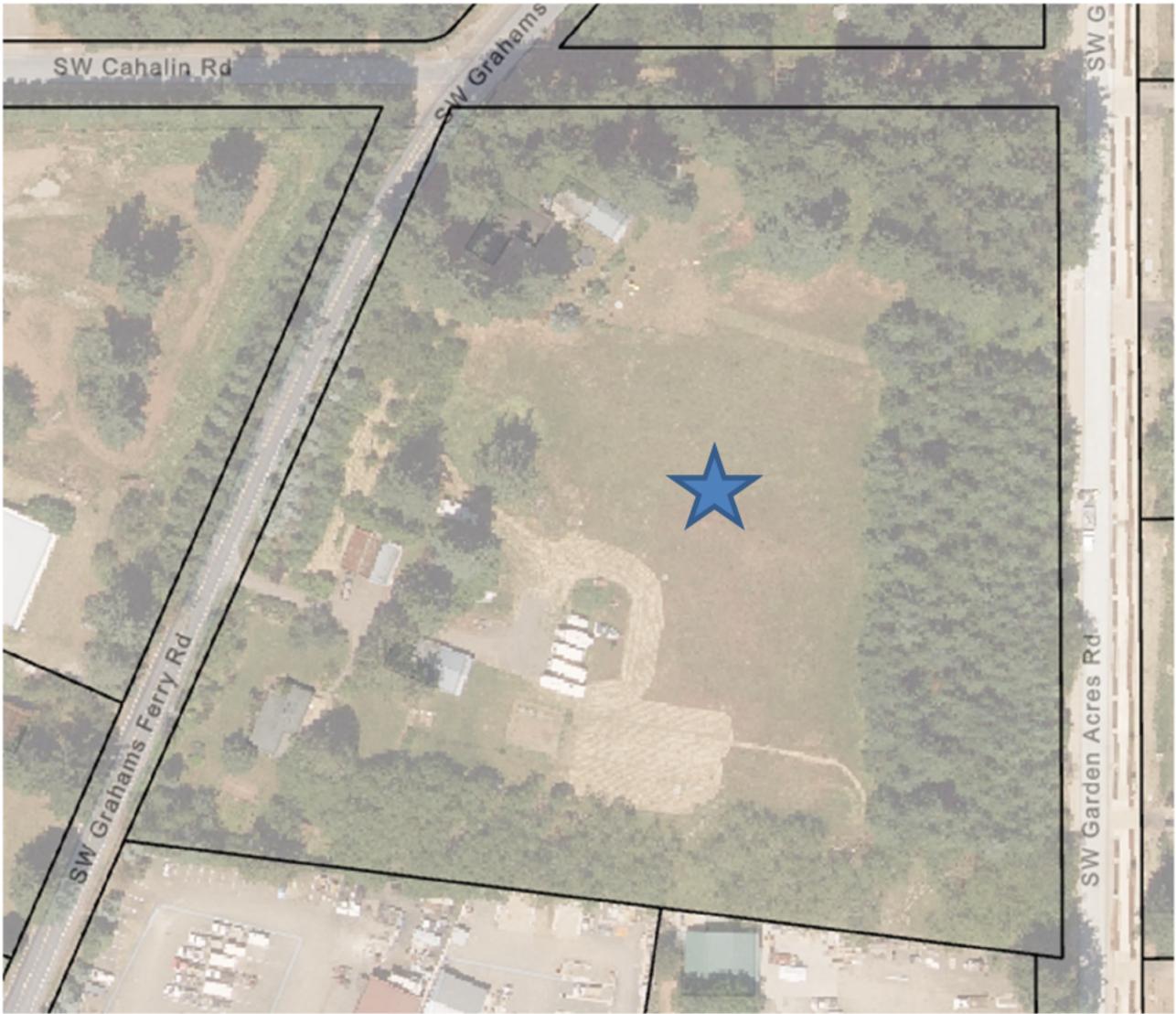


EXHIBIT B

Development and Developer Public Works Site Plan

