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66270
RECREATION/ACCESS EASEMENT LEASE

State of Oregon, County of Klamath
Recorded 09/17/04 3:48 p m
Vol M04 Pg 62646-54
Linda Smith, County Clerk
Fee \$ 61.00 # of Pgs 9

DATED: August 24, 2004

PARTIES:

Klamath County ("Lessor")
County Commissioners
305 Main Street
Klamath Falls, OR 97601

City of Klamath Falls ("Lessee")
City Manager
500 Klamath Ave.
Klamath Falls, OR 97601

RECITALS:

Lessor acquired a recreation/access easement from Pine Cone LLC., the "Owner," attached hereto as Exhibit A (hereinafter "Easement"). The Easement was obtained with Title III money authorized by Public Law 106-393 and Lessee desires to develop, operate and maintain the Easement for public use consistent with Title III requirements.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT:

Section 1. The Property. This property and the facilities thereon will be known as the "TimberMill Shores Recreation/Access Easement" and signage and publicity for the use of the property and facilities will so reflect. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Easement situated in Klamath County, Oregon, and fully described as follows:

Trailhead: A Parcel of Land Situated in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T38S, R9E of the Willamette Meridian, Klamath County, Klamath Falls, Oregon, being more particularly described as follows:

Beginning at the northeasterly corner of that property shown in County Survey Number 2618, as filed at the Klamath County Surveyors Office, said point being marked with a 5/8" rebar; thence, along the Southeasterly right-of-way of Klamath Avenue, N.66°47'26"E. 430.95 feet; thence, leaving said right-of-way, S.23°06'03"E. 199.23 feet to the mean high water Line of Lake Ewauna; thence along said mean high water

GROUND LEASE - Page 1
Upon recording return to:
Klamath County, County Commissioners
305 Main Street
Klamath Falls, OR 97601

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line, S.65°44'17"W. 389.37 feet; thence continuing along said mean high water line, S.83°10'50"W. 36.96 feet; thence continuing along said mean high water line, N.28°58'14"W. 60.44 feet to a 5/8" rebar per said County Survey Number 2618; thence leaving said mean high water line, N.23°06'03"W. 135.82 feet to the Point of Beginning.

Trail: A strip of land 30 feet in width contiguous to and measured at right angles from the mean high water line of Lake Ewauna beginning at the Southeast corner of the Trailhead parcel described above and terminating at a point marked by a steel fence post located as follows:

Commencing at a 1-inch iron pipe marking the Northeast corner of Government Lot 9 of said Section 4; thence South 00 degrees 23' 00" East, 1,320.14 feet to a 1-inch pipe on the North line of Lot 79 of Enterprise Tracts, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, thence South 89 degrees 48' 30" West along the North line of said Lot 79, 688.46 feet to a one-inch iron pipe; thence continuing South 89 degrees 48' 30" West, 30.00 feet to a point on the bank of Lake Ewauna; thence Southerly following the bank of Lake Ewauna the following courses and distances: South 05 degrees 25' 14" West, 49.12 feet; South 24 degrees 40' 19" East, 325.16 feet; South 11 degrees 25' 13" East, 518.73 feet; South 14 degrees 52' 57" East, 209.20 feet; South 05 degrees 41' 51" East, 168.92 feet; South 05 degrees 02' 49" West, 1,126.98 feet to said steel fence post, in Section 4, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Section 2. Occupancy.

2.1 Original Term. The term of this Lease is ninety-nine (99) years and shall commence on August 24, 2004, and continue through August 23, 2103 unless sooner terminated as hereinafter provided.

2.2 Possession. Lessee's right to possession and Lessee's obligations under this Lease shall commence on August 24, 2004, and shall continue through August 23, 2103, unless sooner terminated pursuant to provisions of this Lease.

2.3 Termination. The Lessor shall have the power to unilaterally terminate this Lease if Lessee defaults as described in Section 13 of this Lease by giving the Lessee notice, in writing, of its intention to terminate the Lease. Lessor shall give Lessee ninety (90) days written notice, indicating the termination date of the Lease. Upon receipt of the Termination

Notice, Lessee shall immediately initiate the closing of its activities and protect the improvements. Lessor also agrees to provide Owner of fee title to the Property with a courtesy copy of the notice of intent to terminate the lease concurrent with the notice provided to Lessee.

2.4 Option. In the event Lessee needs a longer term for financing purposes or desires to operate and maintain the Easement area beyond August 23, 2103, Lessee has the option to renew this Lease for an additional ninety-nine (99) years for \$1.00 by providing Lessor at least One-hundred eighty (180) days notice prior to the expiration of the original term.

Section 3. Rent. In accordance with current Oregon Law on the taxation of real property, Klamath County has determined that Lessee and the leased premises qualify for exemption from real property taxes. Lessee shall pay to Lessor as rent for the Property One dollar (\$1.00) in advance.

Section 4. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the property.

Section 5. Use of the Property.

5.1 Title III. Lessee intends to improve and maintain the Easement for recreation/access purposes as required by Title III, and Lessee agrees to comply with all terms, conditions and requirements of the Easement as if Lessee were the Grantee under said Easement.

5.2 Construction of the Project. It is anticipated that the Recreation/Access Easement will be developed in phases. Lessee will initially focus on the development of the 2-acre trailhead to integrate it into and with the existing development of Veterans Park. The subsequent development of the trail, which may not begin for some time contingent on available funding, will be coordinated with the development of the abutting Timbermill Shores properties. As each phase is initiated Lessee will submit to Lessor three sets of preliminary development plans and specifications approved by the City Manager and, when required by law, prepared by an architect or engineer licensed in the State of Oregon. Concurrent with the submission of the preliminary plans to Lessor, Lessee also agrees to provide Owner with a copy of the plans. The plans and specifications shall contain sufficient detail to enable Lessor to make an informed judgment about the design and quality of the development proposal submitted for approval. Lessor shall not unreasonably disapprove such plans and specifications. Approval or disapproval shall be communicated to Lessee in the manner provided for notices in accordance with Section 15, within thirty (30) days after receipt

of complete plans and specifications by Lessor. Any disapproval shall be accompanied by a statement of the specific reasons for such disapproval. Final working drawings and the development work shall conform in all significant respects with the approved preliminary plans and specifications except as otherwise authorized in writing by Lessor.

5.3 Use Regulations and Security. Use regulations for the trail will be consistent with Title III and with those regulations generally applicable to other public paths and bikeways in the community. In development of the trail, or portions thereof, Lessee will provide appropriate security measures adequate to protect undeveloped abutting properties. The security measures will be coordinated with the abutting property owner and, notwithstanding the provisions of Paragraph 6 of the Easement, may include chain link fencing separating the trail from abutting undeveloped properties.

Section 6. Repairs and Maintenance.

6.1 Lessee obligations. Lessee shall have the obligation to repair and maintain the premises and the improvement to the extent necessary to comply with the requirements of Title III and the Easement.

6.2 Facilities and services. Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever during this lease such as, but not limited to, water, heat, gas, hot water, electricity, lights and power. Lessor shall in no event be required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs during the term of this Lease.

Section 7. Title to Improvements. Title to Improvements shall be and remain in the Lessee until the expiration of the term, unless this Lease is terminated sooner as provided. Upon such expiration or sooner termination, title to the Improvements shall automatically pass to, vest in, and belong to Lessor without further action on the part of either party and without costs or charge to Lessor.

Section 8. No Waste. Lessee shall not do or suffer any waste or damage, disfigurement, or injury to the premises or the improvements, reasonable wear and tear excepted.

Section 9. Inspection and Access. Lessee shall permit Lessor or its authorized representative to enter the premises and the improvements at all reasonable times during usual business hours for the purpose of inspecting the same. Nothing in this Lease shall imply any duty or obligation on the part of Lessor to do any work or make any improvements of any kind whatsoever to the

premises or improvements.

Section 10. Lessor's Exculpation and Indemnity.

10.1 Lessee exclusive control. Lessee is and shall be in exclusive control of the easement and of the improvements, 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 improvements or any injury or damage to the premises or the improvements or to any property, whether belonging to Lessee or to any other person, caused by any fire, breakage, leakage, defect, or bad condition in any part or portion of the premises or of the 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 improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of all or any of the improvements or from any kind of injury that may arise from any other cause whatsoever on the premises or in or on the improvements, including defects in construction of the improvements, latent or otherwise.

10.2 Indemnification. Lessee hereby covenants and agrees to defend and indemnify Lessor, its agents, officers and employees, and the owner of the property burdened by the Easement ("Owner"), and to hold them harmless from any losses, claims, actions, costs, expenses, judgments, subrogation or other damages resulting from injury to any person including and resulting in death, or damage including loss or destruction to property, arising or resulting from the fault, negligence, wrongful act or wrongful omission of the Lessee, including loss or liability contributed to by the Lessor's own negligence. This right of indemnification is in addition to and not in replacement of any other right that the Lessor may have under any statute or under the common law. No provision of this Lease shall be interpreted or applied to waive any statutory limitation of liability which the parties may have, including, but not limited to the provisions of ORS 105.672 to 105.696 and ORS 30.260 to 30.300.

Section 11. Insurance and Indemnification.

11.1 Insurance. Lessee shall obtain and at all times during the duration of this Lease keep in effect comprehensive liability insurance and property damage insurance covering the premises as prescribed in the Oregon Tort Claims Act effective at the time of any occurrence.

11.2 Certificates of insurance. Certificates of Insurance shall be provided to the Lessor and Owner prior to the commencement of any work on the premises. These Certificates shall contain provision that coverage is afforded under the policies and cannot be cancelled or materially altered until at

least thirty (30) days prior written notice has been give to the Lessor. Certificates which state merely that the carrier "*will endeavor to mail written notice*" are not sufficient. Lessee shall include Klamath County and Owner, and their officers, agents and employees as additional insureds or shall furnish an additional insured endorsement naming the same as additional insureds to Lessee's existing public liability and property damage insurance, for Lessee's activities pursuant to the performance of this Lease.

11.3 Renewal. Lessee shall ensure that the Lessor ~~is~~ and Owner are provided with a renewal certificate at least fifteen (15) days prior to the expiration date of the coverage in the event that the original certificate expires prior to the scheduled termination of this Lease. Certificates of Insurance shall be provided to the Lessor and Owner prior to the commencement of any work on the premises. These Certificates shall contain provision that coverage is afforded under the policies and cannot be cancelled or materially altered until at least thirty (30) days prior written notice has been give to the Lessor. Certificates which state merely that the carrier "*will endeavor to mail written notice*" are not sufficient.

Section 12. Assignment and Subletting. Lessee shall not voluntarily, or by operation of law, assign, transfer, encumber, or otherwise sublet any or all of the Property subject to this Lease or the improvements.

Section 13. Defaults and Remedies.

13.1 Events of Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:

a. Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease, where such failure shall continue for a period of One-hundred eighty (180) days after written notice thereof from Lessor to Lessee. Lessor also agrees to provide Owner of fee title to the Property with a courtesy copy of the notice of intent to terminate the lease concurrent with the notice provided to Lessee.

b. Failure of the Lessee to maintain the Easement as required by Title III and the terms of the Easement.

13.2 Remedies Upon Default. In the event of such default or breach by Lessee, Lessor may, at any time thereafter, with or without notice or demand, and without limiting Lessor in the exercise of any right or remedy available to Lessor, pursue any or all of the following remedies:

a. Terminate Lessee's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the

property to Lessor.

b. Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Property. In such event, Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease.

c. Elect, but is not obligated, to make any payment or to perform or comply with any requirement or condition required of Lessee under this Lease. All amounts so paid by Lessor, plus the cost of any performance or compliance, shall be deemed to be rent payable by Lessee within 30 days after Lessor has provided Lessee with written notice of the amounts paid hereunder. No such payment or performance by Lessor shall constitute a waiver of a default or render Lessor liable for any loss or damage resulting from any such payment or performance.

d. Pursue any other remedy now or hereafter available to Lessor under the laws of the State of Oregon.

Section 14. Miscellaneous Provisions.

14.1 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

14.2 Incorporation of Agreement. This Lease contains all the agreements of the parties with respect to any matters in regards to the Property. No prior written leases, negotiations or offers shall be effective and this Lease agreement embodies the entire agreement between the parties.

14.3 Choice of Law. This Lease agreement shall be interpreted and construed and governed by the laws of the State of Oregon.

14.4 Time of the Essence. Time is of the essence in the performance of each of Lessee's obligations under this Lease.

Section 15. Notices. Any notice required or permitted under this Lease shall be given when actually delivered or forty-eight (48) hours after deposited in the United States mail, postage prepaid, to the address shown below or to such other address as may be specified from time to time by either of the parties in writing.

Klamath County
305 Main Street
Klamath Falls, OR 97601

City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

Section 16. Attorney Fees. If suit or action is instituted in connection with any controversy arising from the Lease, the prevailing party shall be entitled to recover, in addition to

costs, such sums as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.


Section 17. Non-Waiver. Waiver by either party of strict performance of any provision of the Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

"LESSOR"

KLAMATH COUNTY

By: 

John Elliott, Chairman

By: 

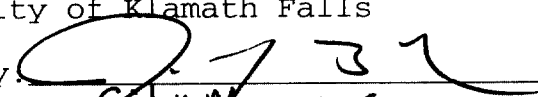
Al Spitzer, Commissioner

By:  Voted nay

M. Steven West, Commissioner

"LESSEE"

City of Klamath Falls

By: 

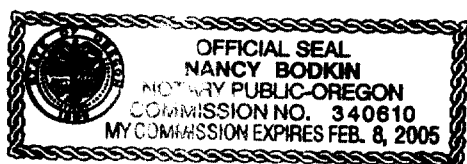
its: City Manager

NOTARY ACKNOWLEDGEMENT PAGE
FOR
RECREATION/ACCESS EASEMENT LEASE
Dated August 24, 2004

State of Oregon
County of Klamath

On this 24th day of August, 2004, personally appeared before me the above named
John Elliott & Al Switzer as County Commissioners
for the County of Klamath, a public body and acknowledged the foregoing instrument to be its voluntary act and deed.

WITNESS My hand and official seal.

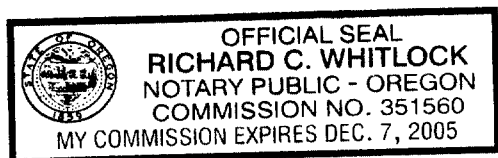


Nancy Bodkin
Notary Public for Oregon
My Commission expires Feb 8, 2005

State of Oregon
County of Klamath

On this 19th day of August, 2004, personally appeared before me the above named
Jeffrey D. Ball as City Manager
for the City of Klamath Falls, a municipal corporation and acknowledged the foregoing instrument to be its voluntary act and deed.

WITNESS my hand and official seal.



Richard C. Whitlock
Notary Public for Oregon
My Commission Expires: 12/7/2005