

04 SEP 17 2004

MTT- 66270KR

Vol M04 Page 62658

**LEASE**

66270

DATED: September 1, 2004

State of Oregon, County of Klamath  
Recorded 09/17/04 3:48 p m  
Vol M04 Pg 62658-65  
Linda Smith, County Clerk  
Fee \$ 56.00 # of Pgs 8

**PARTIES:**

Klamath Wingwatchers, Inc.  
P.O. Box 251  
Klamath Falls, OR 97601

("Lessor")

City of Klamath Falls  
City Manager  
500 Klamath Ave.  
Klamath Falls, OR 97601

("Lessee")

**RECITALS:**

Lessor is the owner of the real property in the City of Klamath Falls, County of Klamath, (hereinafter "the Property") described as follows:

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 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.

The Property is subject to the terms and conditions of the Lake Ewauna Trail Easement (hereinafter "the Easement"), the terms and conditions of which are incorporated herein by this reference. The Easement was acquired by Klamath County with Title III money authorized by Public Law 106-93 and is subject to various Title III requirements. Lessee has leased the Easement from the County of Klamath and desires to lease the Property from Lessor for the purpose of obtaining exclusive control of the Property in order to

**GROUND LEASE - Page 1**  
Upon recording return to:  
Klamath Wingwatchers, Inc.  
c/o B.J. Matzen  
435 Oak Avenue  
Klamath Falls, OR 97601

*BJM*

protect and enhance its use of the Easement.

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

**AGREEMENT:**

**Section 1. The Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Property situated in Klamath County, Oregon, and described hereinabove.

**Section 2. Occupancy.**

**2.1 Original Term.** The term of this Lease is ninety-nine (99) years and shall commence on September 1, 2004, and continue through September 1, 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 September 1, 2004, and shall continue through September 1, 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 Klamath County, owner of the Easement, 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 Property beyond September       , 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 the leased premises qualifies for exemption from real property taxes. Lessee shall pay to Lessor as rent for the Property One dollar (\$1.00) in advance. Lessee agrees to pay any real property taxes imposed during the term of this Lease.

**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 Property 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 Klamath County 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 Lessor with a copy of the plans. The plans and specifications shall contain sufficient detail to enable Klamath County to make an informed judgment about the design and quality of the development proposal submitted for approval. Final working drawings and the development work shall conform in all significant respects with the County-approved preliminary plans and specifications except as otherwise authorized in writing by Klamath County.

**Section 6. Repairs and Maintenance.**

**6.1 Lessee obligations.** Lessee shall have the obligation to repair and maintain the premises and the improvements 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 Property or the improvements, reasonable wear and tear excepted.

**Section 9. Inspection and Access.** Lessee shall permit Lessor or its authorized representative to enter the Property 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 Property 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 Property 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 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. Lessee shall also reimburse Lessor for such additional, comprehensive liability insurance as may be acquired by Lessor from time to time to provide a reasonable level of additional protection for Lessor, its officers, agents and employees. Such reimbursement shall be made within 30 days of receipt of a written invoice from Lessor. Should Lessee at any time elect to self-insure or purchase alternative insurance to cover such additional liability protection, Lessee shall advise Lessor in writing of the election, at which time Lessor shall advise Lessee the level of additional coverage requested by Lessor. In the event Lessor and Lessee cannot agree on the appropriate level of additional insurance necessary, the parties agree to submit the issue to binding arbitration pursuant to the provisions of ORS 36.450, et seq.

**11.2 Certificates of insurance.** Certificates of Insurance shall be provided to the Lessor 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 Lessor, and its officers, agents and employees as an additional insured or shall furnish an additional insured endorsement naming the same as additional insured 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 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 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 Klamath County, owner of the Easement, 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 Wingwatchers, Inc.  
P.O. Box 251  
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 Wingwatchers, Inc.

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

"LESSEE"

City of Klamath Falls

By:   
its: Mayor

NOTARY ACKNOWLEDGEMENT PAGE  
FOR  
LEASE  
Dated September 1, 2004

State of Oregon  
County of Klamath

On this 1<sup>st</sup> day of September, 2004, personally appeared before me the above named

Bonham J. Matzen as President

for the Klamath Wingwatchers, Inc., an Oregon corporation and acknowledged the foregoing instrument to be its voluntary act and deed.

WITNESS My hand and official seal.



Kristi L. Redd

Notary Public for Oregon

My Commission expires: 11/16/2007

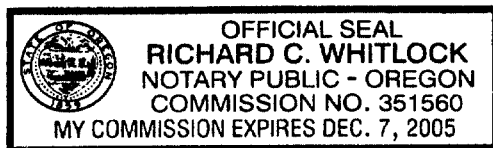
State of Oregon  
County of Klamath

On this 1<sup>st</sup> day of September, 2004, personally appeared before me the above named

Todd Kellstrom as Mayor

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