

M06-04670

Klamath County, Oregon

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GROUND LEASE

DATED: October 13, 1998

PARTIES:

Klamath County ("Lessor")

Klamath Community Youth Sports Complex ("Lessee")

RECITALS:

1. Lessor acquired 120 acres of property along Foothills Boulevard by tax foreclosure on which Lessee desires to establish a Sports Complex.

2. Lessor published notice of a public hearing in regard to the subject property and determined that the property was not needed by Klamath County as a site for the establishment of County facilities and that it was in the best interest of the public of Klamath County to lease this property to Lessee for the establishment of a Sports Complex.

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 "Klamath County Youth Sports Complex" 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 that certain real property situated in Klamath County, Oregon, further described as Parcel 3 of Land Partition 60-97 located in Section 35, Township 38 S., Range 9 E. of the Willamette Meridian, Klamath County, Oregon and is herein referenced as "the Property". Easements and rights of ways apparent on the ground or of record on this property are excluded from this Lease. A portion of the property, as yet unsurveyed, which will extend Wiard Street North to Foothills Boulevard is excluded from this Lease. Lessor reserves the right to grant future public utility easements and rights of way necessary for continued development of the property in the surrounding and adjacent areas. In addition, the West boundary, yet to be surveyed, of the property which extends South from

N/c

5901

Foothills Boulevard to Upland Way, will be established at a later time between elevation contours 4151 and 4160.

Section 2. Occupancy.

2.1 Contingency. This lease is contingent upon the approval by the City of Klamath Falls from the changing of the zoning of the subject property to a Public Facility.

2.2 Original Term. The term of this Lease is ninety-nine (99) years and shall commence on October 1, 1998, and continue through September 30, 2097 unless sooner terminated as hereinafter provided.

2.3 Possession. Lessee's right to possession and obligations under this Lease shall commence on October 1, 1998, and shall continue through September 30, 2097, unless sooner terminated pursuant to provisions of this Lease.

2.4 Termination. The Lessor shall have the power to unilaterally terminate if Lessee defaults as described in Section 15 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 the Sports Complex and its activities and to protect the improvements and real property from waste. The Lessee may terminate this Lease under the provisions of Condemnation, Section 13.

2.5 Option. In the event Lessee needs a longer term for financing purposes or desires to operate the Klamath County Youth Sports Complex beyond September 30, 2097, 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 qualifies 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. Lessee intends to construct a Sports Complex with the related improvements on, under, and over the premises. The Sports Complex and all the related improvements referred to in this Lease as the "project".

5.1 Construction of the project. It is anticipated that the Sports Complex will be built in phases. As each phase is initiated Lessee will submit three sets of preliminary construction plans and specifications prepared by an architect or engineer licensed in the State of Oregon, which are sufficient to enable Lessor to make an informed judgment about the design and quality of the construction for approval. Lessor shall not unreasonably disapprove such plans and specifications. At that time, Lessor will establish any necessary easements for infrastructure and development of the surrounding properties. Approval or disapproval shall be communicated to Lessee in the manner provided for notices within fifteen (15) days after receipt of complete plans and specifications by Lessor. Any disapproval shall be accompanied by a statement of the reasons for such disapproval. Following any disapproval, Lessee may elect either to revise the plans and specifications and resubmit them to Lessor pursuant to this paragraph or to contest the reasonableness of the disapproval. Final working drawings and the construction work shall conform in all significant respects with the approved preliminary plans and specifications except as otherwise authorized in writing by Lessor.

5.2 Completion of construction. Lessee shall initiate substantial construction of the Klamath County Youth Sports Complex within five (5) years. The complex as presently planned, with any changes thereto approved by Lessor, shall be completed not later than December 31, 2013. The work shall be performed in accordance with all Legal Requirements and in a good and professional manner. For the purposes of this Lease, the term *Legal Requirements* includes all present and future laws, ordinances, orders, rules, regulations and requirements of all Federal, State and Municipal Governments, departments, commissions, boards, and officers, foreseen or unforeseen, ordinary as well extraordinary. Lessor will inspect the work through the Klamath County Building Department in accordance with the State of Oregon Building Codes.

5.3 Sole use. The property shall be used and occupied by the Lessee solely for the purpose of constructing, maintaining, and operating the Sports Complex.

5.4 Compliance with Laws. Lessee shall, at Lessee's sole expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, and requirements in effect during the term of any part of this Lease. Lessee shall not use the Property nor permit the use of the Property in any manner that will tend to create waste or a nuisance upon the Property. Lessee further covenants that they shall not cause to be stored or put upon the Property any hazardous materials or hazardous waste. Lessee shall indemnify and hold Lessor harmless from any condition

created upon the Property by Lessee.

5.5 **Liens.** Lessee shall not suffer or permit any liens to attach to the interest of Lessor in all or any part of the premises by reason of work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee. If any such lien shall at any time be filed against the premises, the Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing the same by either payment, deposit, or bond.

5.6 **Alterations, additions, and new improvements.** Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Lessor, expressed or implied, by inference or otherwise, to any person, firm, or corporation for 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. Lessee is not intended to be an agent of Lessor for the construction of improvements on the premises. Lessor shall have the right to post and keep posted at all reasonable times on the premises and on the improvements any notices that Lessor shall be required to post for the protection of Lessor and of the premises and of the improvements from any such lien. The foregoing shall not be construed to diminish or vitiate the rights of Lessee in this Lease to construct, alter, or add to the improvements.

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 a Sports Complex Plan.

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.

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. Lessor will cooperate with Lessee to make necessary adjustments to this Ground Lease in order for Lessee to

obtain grants for the construction and operation of the Sports Complex.

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

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 premises 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 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.

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 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 its officers, agents and employees as additional insured or shall furnish an additional insured endorsement naming the same as additional insured to Lessees 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. This restriction shall not apply to event management, concessions, or any other financial arrangements made by the Lessee similar to those used by other sports complexes to generate income.

Section 13. Condemnation. If the Property is substantially or totally taken under the powers of eminent domain, or sold by Lessor under threat of the exercise of said power, this Lease shall terminate immediately. If the Property is not substantially or totally taken, either Lessor or Lessee may terminate this Lease. If the Property is not substantially or totally taken and if the Lease is not terminated by either Lessor or Lessee, it shall remain in full force and effect as to the portion of the premises remaining. The land award and compensation for the condemnation or taking of any part of the Property or any payment made herewith shall be the sole and exclusive property of Lessor. Said ownership by Lessor shall be conclusive whether or not compensation is made for the diminished value of the leasehold

interest. Lessee shall, however, be entitled to any award for loss or damage to any of the buildings and improvements upon the Property.

Section 14. Lessor Entitlement in Condemnation. Lessor shall have the right to and shall be entitled to 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.

Section 15. Defaults and Remedies.

15.1 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 of the Lessee to have completed the Sports Complex as described by December 31, 2013.

b. 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.

c. Failure of the Lessee to maintain the Sports Complex sufficiently to achieve the requirements of a Sports Complex.

15.2 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, may either:

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

Section 16. Miscellaneous Provisions.

16.1 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 provision hereof.

16.2 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.

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

Section 17. 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, 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

Klamath Community Youth
Sports Complex
P.O. Box 5230
Klamath Falls, OR 97601

Section 18. 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.

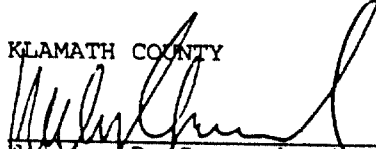
Section 19. **Non-Waiver.** Waiver by either party of strict performance of any provision of the Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

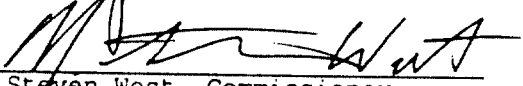
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"LESSOR"

5908

KLAMATH COUNTY


William R. Garrard, Chairman


M. Steven West, Commissioner


Al Switzer, Commissioner

"LESSEE"

KLAMATH COMMUNITY YOUTH
SPORTS COMPLEX


By: _____

its: _____

ACORD CERTIFICATE OF INSURANCE

5909

DATE (MM/DD/YY)
9/22/1998

PRODUCER

Great Basin Insurance
P. O. Box 69
Klamath Falls, OR 97601
(541)882-5507 Fax(541)884-0052

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A North Pacific Insurance Co.
COMPANY B
COMPANY C
COMPANY D

INSURED

Klamath Community Youth
Sports Complex
P.O. Box 5230
Klamath Falls OR 97601

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTORS PROT	TO BE DETERMINED	09/10/98	09/10/99	GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 100,000 MED EXP (Any one person) \$ 5,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				STATUTORY LIMITS EACH ACCIDENT \$ DISEASE - POLICY LIMIT \$ DISEASE - EACH EMPLOYEE \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Klamath County, it's officers, agents & employees are named as additional insureds but only with respect to liability which results from the operations of the NAMED INSURED. Per North Pacific form CS809.

CERTIFICATE HOLDER

Klamath County
409 Pine Street
Klamath Falls OR 97601
ACORD 25-8 (3/93)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Rob Henderson

© ACORD CORPORATION 1993

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - VICARIOUS LIABILITY ONLY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

1. WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization (called "additional insured") shown in the Schedule but only with respect to liability arising out of:
 - A. Your ongoing operations performed for the additional insured(s) at the location designated above, or
 - B. Acts or omissions of the additional insured(s) in connection with their general supervision of such operations.
2. With respect to the insurance afforded the additional insured, the following additional provisions apply:
 - A. Exclusions b., j., k., l. and n. under COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) do not apply.
 - B. Additional Exclusions. This insurance does not apply to:
 - (1) "Bodily injury" or "property damage" for which the additional insured(s) are obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the additional insured(s) would have in the absence of the contract or agreement.
 - (2) "Bodily injury" or "property damage" occurring after:
 - (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance, or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
 - (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
 - (3) "Bodily injury" or "property damage" arising out of any act or omission of the additional insured(s) or any of their employees, other than the general supervision by the additional insured(s) of your ongoing operations performed for the additional insured(s).
 - (4) "Property damage" to:
 - (a) Property owned, used or occupied by or rented to the additional insured(s);
 - (b) Property in the care, custody, or control of the additional insured(s) or over which the additional insured(s) are for any purpose exercising physical control; or
 - (c) Any work, including materials, parts or equipment furnished in connection with such work, which is performed for the additional insured(s) by you.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

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TOPS FORM 45816

RECEIPT		DATE <u>10-13</u> 19 <u>98</u>	NO. <u>2522</u>
RECEIVED FROM <u>Klamath Community Youth Sports</u>			
ADDRESS <u>Complish</u>			
FOR <u>99 year lease - Parcel 3 land partition</u>		DOLLARS \$ <u>1.00</u>	
<u>60-97 Sect 35 T 38 S R 9 E</u>			
ACCOUNT		HOW PAID	
AMT. OF ACCOUNT		CASH	<input checked="" type="checkbox"/>
AMT. PAID		CHECK	
BALANCE DUE		MONEY ORDER	
		BY <u>Lancy</u>	



STATE OF OREGON)
County of KLAMATH)

CERTIFY that this is a true and correct
copy of a document in the possession
of the Klamath County Clerk.

Dated: 3-14-06

LINDA SMITH, Klamath County Clerk

By: L. Smith, Deputy