

GROUND LEASE AND USE AGREEMENT



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DATED: March 11, 2008

03/13/2008 09:16:52 AM

Fee: NO FEE

PARTIES:

Klamath County

("Lessor")

Klamath Sportsmans Park Association, Inc.

("Lessee")

RECITALS:

1. For approximately 25 years, Lessee has rented certain real property that is the subject of this Lease, from a private party who afforded Lessee a below market rental rate for the reason that the property was open to the public for recreational use.

2. Lessor has determined that it is in the public's best interest to ensure that the property continues to be used for outdoor recreation.

3. In order to qualify for grants from the Oregon Parks and Recreation Department, Lessor was required to purchase the real property that is the subject of this Lease and to ensure that said real property continued to be used for the purpose of outdoor recreation.

4. In addition to the above mentioned grants, Lessee obtained public and private funding necessary to Lessor's purchase of said real property.

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 shall be known as the "Bill Scholtes Klamath Sportsman's Park" 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:

A tract of land described as E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$,

and a portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 29, T39S, R7E, of the Willamette Meridian and portions of Lot 1, Lot 2, NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$, NE $\frac{1}{4}$ of Section 32, T39S, R7E of the Willamette Meridian, Klamath County, Oregon and 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. 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. Any such easements or right of way shall be accomplished in a manner compatible with existing under ground utilities.

Section 2. Occupancy.

2.1 Original Term. The term of this Lease is ninety-nine years and shall commence on March 11, 2008 and shall continue until March 10, 2107 unless sooner terminated as hereinafter provided.

2.2 Possession. Lessee's right to possession and obligations under this Lease shall commence on March 11, 2008, and shall continue through March 10, 2107, unless sooner terminated pursuant to provisions of this Lease.

2.3 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 Park 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.

2.4 Option. In the event Lessee needs a longer term for financing purposes or desires to operate the Bill Scholtes Klamath Sportsman's Park beyond March 10, 2107, 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 shall continue to use the park with the related improvements thereon solely for recreational purposes.

5.1 Construction on the property. There is currently no plan for new construction on the property, however, in the event construction is planned at any time in the future it shall be first approved by the Lessor and will follow the same requirements, rules and regulations that apply to any public improvement project. As each project 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. A statement of the reasons for such disapproval shall accompany any 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 Sole use. The property shall be used and occupied by the Lessee solely for the purpose of maintaining and operating Bill Scholtes Klamath Sportsman's Park and for no other purpose absent the written consent of Lessor.

5.3 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 except in approved containers. Lessee shall indemnify and hold Lessor harmless from any condition created upon the Property by Lessee.

5.4 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.

5.5 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 improvements to the extent necessary to comply with the requirements of the Bill Scholtes Klamath Sportsman's Park.

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 operation of the Park.

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, on behalf of itself, any of its member groups, and all other persons operating facilities on the Bill Scholtes Klamath Sportsman's Park, agrees to indemnify and hold harmless County (and its agents, Commissioners, officers and employees) from and against any and all actions, suits, costs, claims, demands, damages, expenses, loss and liability for injury to or death of any persons whomsoever and for the loss of or damage to the property of any persons whomsoever, caused by or in any way arising out of wrongful or negligent activities under this Agreement, except as such injury or death, loss or damage may be caused by sole negligence of County.

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 activity 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 parks 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 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.

b. Failure of the Lessee to maintain Bill Scholtes Klamath Sportsman's Park sufficiently to achieve the requirements of a Recreational Sports Park.

c. Failure of Lessee to repay Klamath County the \$50,000.00 loan within 8 years, as specified in the Promissory Note between Klamath County and the Klamath Sportsmans Park Association, Incorporated dated 5 March 2008.

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

16.3 Time is 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 Sportsmans Park
Association, Inc.
P O Box 596
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.

Section 20. Operation of Park.

20.1 Master Plan. Bill Scholtes Sportman's Park and the Klamath County Park Department will develop and maintain a Master Plan and will periodically update the plan through mutual agreement. County will have ultimate approval of all development and construction prior to and during construction of any phase of this Park. Any development and construction must be done in accordance with County approved plans. All timber cut and removed from the Park shall be paid for on the basis of then prevailing stumpage rates and verified by scales, within 60 days after cutting and removal. Monies for removed timber shall be paid to County and deposited in a fund to be used solely for the benefit of the Park.

20.2 Forest Health. Any timber cut will be only cut for forest health and never initiated to satisfy a monetary need. A professional Forester will be consulted prior to any timber cut.

Section 21. Health and Safety. In order to protect the general health, safety and welfare of the public, the Association will abide by conditions A through Y of paragraph 12 of Conditional Use Permit No. 45-82, issued to the Klamath County Park Department, dated December 14, 1982, and attached hereto. County and Association will work together in order to establish general rules for public use and conduct at the Park, which shall

include a prohibition of the use of alcohol and drugs, except by special permit.

Section 22. User Fees. Association will work in conjunction with County to establish user fees at the Park to be used solely for the financing of planning, development and operation of the Park. Association will be responsible for the collection of those user fees, and will submit before July of each year general accounting of all aforesaid fees charged for the previous calendar year or portion thereof. Such annual report shall also contain data with respect to the number of persons who used the Park during the previous calendar year and may include other pertinent data.

Section 23. Wildlife Habitat Protection.

23.1 Access. Vehicular access to John C. Boyle Reservoir¹ shall be limited to the now existing boat launch area adjacent to the State Highway Bridge. This includes access for water trucks servicing the Park.

23.2 Protected areas. County and Association will endeavor to work together in order to protect, improve and enhance that wildfowl habitat and nesting area lying within the Park and between the Park and the John C. Boyle Reservoir. Such work may include planning, restriction of human activities, fencing, creation of naturally protected areas, beneficial planting and other projects as deemed appropriate.

23.3 Chemical applications. In the event that vector control or other health and safety considerations may require the use of chemical and/or organic pesticides, herbicides, oil or other agents, special care must be exercised to control drift or water-bound migration thereof from the Park to riparian areas inside the Park Boundary.

Section 24. Insurance. Association shall secure and continuously maintain a comprehensive general liability insurance policy to protect County against all loss by reason of injury to any persons or damage to any property, including property of County, arising out of Association's use of Park. Such insurance shall include provisions or endorsements naming County, their respective Commissioners, directors, officers and employees as additional insured; provisions that such insurance is primary insurance with respect to the interests of County and that any insurance maintained by County is excess and not contributory insurance with the insurance required hereunder; cross-liability

¹ This agreement is made when John C. Boyle Reservoir is currently owned and operated by PacifiCorp and is subject to change.

or severability or insurance interest clause; and provisions that such policies shall not be cancelled or their limits of liability reduced without 30 days prior written notice to County. A certificate in form satisfactory to County certifying to the issuance of such insurance shall be furnished to County. Limits of liability for all requirements contained herein shall not be less than \$2,000,000 single limit.


Section 25. Termination. This Agreement may be terminated by Association at any time by giving County at least 30 days prior notice in writing. County may terminate this Agreement immediately for cause, if Association violates any of the terms and conditions of this Agreement and has not cured or commenced the diligent pursuit of a cure of such violation within a period of 30 days after written notice is given by County to Association specifying the nature of such violation.


DONE AND DATED this 17th day of March, 2008

"LESSOR"

KLAMATH COUNTY BOARD
OF COMMISSIONERS

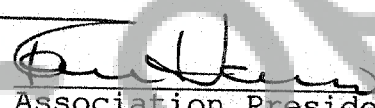

Chairman

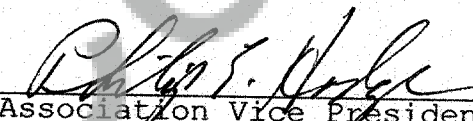

Commissioner


Commissioner

"LESSEE"

KLAMATH SPORTSMANS
PARK ASSOCIATION, INC.


Association President


Association Vice President