



**NORTH CLACKAMAS**  
**PARKS & RECREATION DISTRICT**

Administration

Kia Selley, Director  
North Clackamas Parks and Recreation District  
3811 SE Concord Road  
Milwaukie, OR 97267

November 14, 2024

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Sitting/Acting as the North Clackamas Parks and Recreation District Board of Directors

**Approval of an Amendment with Phoenix Investment Group for the NCPRD maintenance shop lease agreement. Amendment Value is \$221,923 for 2 years. Total Agreement Value is \$337,135 for 3 years. Funding is through the NCPRD General Fund. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	6/10/2021 - NCPRD extended the fourth lease agreement for an additional three years through December 31, 2024. 7/12/2018 - NCPRD extended the third lease agreement for an additional three years through December 31, 2021. 6/6/2015 - NCPRD extended the original lease agreement for an additional three years through December 2018. 12/6/2012 Business Meeting - Approved lease agreement for NCPRD Maintenance Shop. 7/17/2012 Policy Session - Directed staff to proceed with lease negotiations with Phoenix Investment Group.		
<b>Performance Clackamas</b>	Ensure safe, healthy, and secure communities by providing NCPRD with the facilities, staff, equipment, and resources necessary to maintain a well-managed and secure park system.  The maintenance operations of NCPRD support the workforce responsible for maintaining the infrastructure of our park system. This essential work enables residents to engage in active lifestyles within safe and secure parks. At this facility, NCPRD staff are dedicated to planting and caring for pollinators. Additionally, NCPRD's Natural Resource team conducts community engagement initiatives, including clean-up and planting events, to foster environmental stewardship.		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	No
<b>Contact Person</b>	Kevin Cayson	<b>Contact Phone</b>	503-789-4570

**EXECUTIVE SUMMARY:** NCPRD's park maintenance and natural resource operations are currently based in this leased facility, which is centrally located and accommodates all of the District's maintenance vehicles and equipment. The facility offers essential indoor workshop space for the repair and maintenance of equipment and other assets, as well as office space for the maintenance and natural resources staff. The District plans to remain in this leased location until a permanent, District-owned facility can be secured.

**RECOMMENDATION:** Staff recommend the Board approve the Fifth Amendment/Extension to the Lease Agreement with Phoenix Investment Group and delegate authority to the NCPRD Director or designee to effectuate any document necessary to effectuate the same.

Respectfully submitted,

Kia Selley, NCPRD Director

For Filing Use Only

**FIFTH AMENDMENT/EXTENSION  
TO  
LEASE AGREEMENT  
BETWEEN  
PHOENIX INVESTMENT GROUP, INC.  
AND  
NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

This is a Fifth Amendment/Extension to that certain Lease Agreement originally dated effective the 21<sup>st</sup> day of December, 2012, and subsequently amended by a First Amendment, a Second Amendment, a Third Amendment and a Fourth Amendment (copies of the Lease Agreement and amendments are attached hereto as **Exhibit 1** for clarification). The Lease and all amendments thereto shall be collectively referred to herein as the “Lease”. The Lease is by and between Phoenix Investment Group, Inc. defined as the “Landlord” and North Clackamas Parks & Recreation District defined as the “Tenant”, Landlord and Tenant are jointly referred to as the “Parties”.

1. **Extension of Term.** The Term is hereby extended for a period of two (2) years commencing January 1, 2025, and continuing through December 31, 2026 (the “Extended Term”). Tenant shall have no further right to extend or renew the Term except as expressly set forth in this Amendment.
2. **Basic Rent.** Basic Rent during the Extended Term shall be as follows:

<b>Basic Rent for Calendar Year</b>	<b>Monthly Amount</b>
2025	\$8,403
2026	\$8,739

3. **Additional Rent.** Until a notice increasing the Additional Rent pursuant to Section 3.2 of the Lease is given by Landlord, the Additional Rent during the Extended Term shall be \$600 for every calendar month of the Extended Term and is payable with and in addition to each monthly Basic Rent payment.
4. **Deposit.** The Security Deposit set out in Section 4 of the Lease is increased to \$8,739. The difference (\$1,557) between the current Security Deposit (\$7,182) and the Security Deposit for the Extended Term (\$8,739) shall be paid to Landlord not later than January 1, 2025.
5. **No Improvements.** Landlord has not agreed to make any improvements to the Leased Premises during the remainder of the Term or in connection with the Extended Term.
6. **Renewal Option.** If the Lease is not in default at the time the option is exercised and is not in default when the Renewal Term begins, Tenant shall have the option to renew this Lease for one (1) additional term of one (1) year, only upon the following terms and conditions:

2.2.1 The renewal term shall commence on January 1, 2027 and expire December 31, 2027 (“Renewal Term”); and

2.2.2 The renewal option may only be exercised by written notice to Landlord received by Landlord not later than July 2, 2026; and

2.2.3 Not later than September 1, 2026, the Landlord notifies Tenant in writing that the Landlord agrees to extend the Lease for the Renewal Term. If Landlord does not give such notice


to Tenant, the renewal option shall be void and the Term of the Lease shall expire on December 31, 2026. The Landlord's written notice to Tenant that Landlord agrees to the extension, shall be sufficient to make the Lease binding for the Renewal Term on both Parties without further act of either of the Parties except the following terms, conditions and provisions shall apply for the Renewal Term:

2.2.3.1. The terms and conditions of the Lease for the Renewal Term shall be identical with those of the Term except: (i) monthly Basic Rent will increase as set out in paragraph 2.2.3.2 below of this Amendment; (ii) Additional Rent will increase in accordance with the Landlord's notices as provided in the Lease; (iii) the Security Deposit will increase to an amount equal to one month's Basic Rent for year 2027 of the Renewal Term, and Tenant shall pay such increase in the Security Deposit no later than January 1, 2027; and (iv) Tenant will have no further option to renew or extend this Lease.

2.2.3.2 The monthly Basic Rent for year 2027 of the Renewal Term shall be equal to the monthly Basic Rent for year 2026 of the Extended Term multiplied by the greater of (i) three percent (3%) or (ii) the average annual increase in the Portland, Oregon Consumer Price Index ("CPI") all urban consumers, all items on the 1982 = 100 base during the Extended Term (or such portion thereof as CPI data is then available) as determined by Landlord.

7. **Affirmation of other terms.** Except as otherwise amended herein, the Lease remains in full force and effect. If there is a conflict between the terms of the Lease and this Amendment, the terms of this Amendment control.

**Phoenix Investment Group, Inc.:**

By:  \_\_\_\_\_  
Todd Call, President

**North Clackamas Parks  
& Recreation District:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 1**

**LEASE AGREEMENT AND AMENDMENTS**





Sarah Eckman, BCS Interim Director

June 10, 2021

Board of County Commissioners  
Clackamas County  
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of Notice to Renew Lease Agreement Fourth Amendment/Extension with Phoenix Investment Group and North Clackamas Parks and Recreation District for District's Maintenance Shop

<b>Purpose/Outcome</b>	Continuation of the lease agreement for the District's Maintenance Shop located at 6199 SE Lake Rd, Milwaukie, Oregon 97222.
<b>Dollar Amount and Fiscal Impact</b>	\$295,968 over 3 years 2022 – \$95,964 2023 – \$98,628 2024 – \$101,376
<b>Funding Source</b>	NCPRD General Fund 213-50-5006-500604-46150
<b>Duration</b>	January 1, 2022 through December 31, 2024, 3 years
<b>Previous Board Action/Review</b>	7/17/2012 Policy Session – Directed staff to proceed with lease negotiations with Phoenix Investment Group 12/06/2012 Business Meeting – Approved Lease Agreement for NCPRD Maintenance Shop. 6/6/2015 NCPRD extended the original lease agreement an additional three years, through December 2018. 7/12/2018 NCPRD extended the third lease extension an additional three years through December 31, 2021
<b>Strategic Plan Alignment</b>	1. Honor, utilize, promote and invest in our natural resources- NCPRD staff housed at this site, invest in planting and maintaining pollinators throughout its park system. NCPRD's natural Resource team is housed at this site and engages community members with clean up and planting events.  3. Grow a vibrant economy. Maintenance operations houses NCPRD's workforce to maintain the infrastructure of NCPRD's park system.
<b>Counsel Review</b>	If item is a contract, including IGAs, leases, or other binding agreements, please put in the date of County Counsel Review and the initials of the attorney performing the review.  1. 5/13/2021

	2. JM
<b>Procurement Review</b>	This Item is a Lease 1. Was the item processed through Procurement? No 2. If no, provide brief explanation: This item is a lease.
<b>Contact Person</b>	Kandi Ho, <i>NCPRD Acting Director</i> , 503-794-8001 Kevin Cayson, <i>Parks and Facilities Manager</i> , 503-789-4570
<b>Contract No.</b>	N/A

**BACKGROUND:**

From 1996 to 2012, NCPRD's maintenance operations were based at a shared space in Milwaukie that they were rapidly outgrowing. With direction from the Board, the District evaluated numerous alternatives for relocating the shop and discussed these options with the Board during a study session on July 17, 2012. The Board directed staff to move forward with a three-year lease agreement at that time. NCPRD entered into the lease with Phoenix Investment Group Inc. and moved operations to its current location—6199 SE Lake Rd, Milwaukie, Oregon—in December of 2012.

NCPRD park maintenance and natural resource operations are currently located in this leased facility. This facility is centrally located and houses all the District's maintenance vehicles and equipment. The space also provides much-needed indoor shop space to repair and maintain the District's equipment and other assets, as well as office space for maintenance and natural resources staff based at the shop.

On June 6, 2015, NCPRD extended the original lease agreement an additional three years, through December 2018.

On July 12, 2018 NCPRD extended the third lease extension an additional three years through December 31, 2021

While NCPRD is still exploring opportunities to locate or build an owned maintenance facility, particularly following the acquisition of three additional properties from the North Clackamas School District, no determinations have been made.

At this time, the District anticipates remaining in the current leased location for the term of this lease amendment. This third amendment would extend the lease agreement through December 2024.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the Fourth Amendment/Extension to the Lease Agreement and sign the notice to renew with Phoenix Investment Group, and requests

the Board delegate authority to the BCS Director or designee to effectuate any document necessary to effectuate the same.

**ATTACHMENTS:**

1. Original Lease Agreement between Phoenix Investment Group and North Clackamas Parks and Recreation District
2. Second Amendment/Extension to Lease Agreement with Phoenix Investment Group
3. Third Amendment/Extension to Lease Agreement with Phoenix Investment Group
4. Written Notice to Renew

Respectfully submitted,

A handwritten signature in blue ink that reads "Sarah Eckman". The signature is written in a cursive, flowing style.

Sarah Eckman, Interim Director  
Business and Community Services





**BUSINESS AND COMMUNITY SERVICES**  
**NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**  
Development Services Building  
150 Beaver Creek Road, Oregon City, OR 97045

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May 11, 2021

Todd Call, President  
Phoenix Investment Group, Inc.  
16074 SE 106<sup>th</sup>, Suite 100  
Clackamas, OR 97015

SUBJECT: Lease renewal, 6199 SE Lake Road, Milwaukie, OR

Dear Mr. Call,

This letter gives notice to Phoenix Investment Group, INC (landlord) that North Clackamas Parks and Recreation District (tenant) is exercising the option to renew the current lease as outlined in Section 1. Extension of the Third Amendment /Extension with Phoenix Investment Group Lease (attached) to renew for one (1) successive term of three (3) years. The renewal term shall commence on January 1, 2022 and expire December 31, 2024 ("Renewal Term").

Sincerely,

A handwritten signature in blue ink that reads "Tootie Smith".

Tootie Smith  
NCPRD Board - Chair

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[www.clackamas.us](http://www.clackamas.us) | [www.ncprd.com](http://www.ncprd.com)

**RECORDING MEMO**

New Agreement/Contract
Amendment/Change Order Original Number
Policy, Reports

ORIGINATING COUNTY

DEPARTMENT:

NCPRD

PURCHASING FOR:

Maintenance Shop Lease

OTHER PARTY TO

CONTRACT/ AGREEMENT:

Phoenix Investment Group, Inc.

BOARD AGENDA DATE:

12/06/2012\_ \_ \_ \_ \_

AGENDA ITEM NUMBER:

2012-113\_ \_ \_ \_ \_

PURPOSE:

Finalize negotiations and execute the Lease Agreement for NCPRD Maintenance Shop

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please return to Patrizia Zamboni Coash, NCPRD Administration after recording.

Clackamas County Official Records  
Sherry Hall, County Clerk  
Commissioners' Journals  
Agreements & Contracts

**2012-4791**

**12/27/2012 09:00:01 AM**

BEFORE THE BOARD OF  
**NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**  
OF CLACKAMAS COUNTY, STATE OF OREGON

In the matter of Authorizing  
Execution of Lease Agreement  
for NCPRD Maintenance Facility

Order No: **2012 - 11 .3**  
(Page 1 of 1)

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board"), acting as the Board of Directors for the North Clackamas Parks and Recreation District ("NCPRD") at its regularly scheduled meeting on December 6, 2012.

WHEREAS, NCPRD has negotiated with Phoenix Investment Group, Inc., ("Landlord") for the lease of 6199 SE Lake Road, Milwaukie, Oregon ("Facility") for a term of three years ("Lease"); and

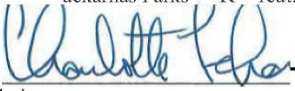
WHEREAS, the Board desires the leasing of the Facility and utilization of the space by NCPRD maintenance staff; and

WHEREAS, to promote efficient government and timely progress on leasing and moving into the Facility, the Board desires to delegate final signing authority to the Director of NCPRD or his designee.

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Director of North Clackamas Parks and Recreation District, or his designee, be and hereby is authorized to finalize negotiations and execute the Lease Agreement, and any and all other agreements or documents necessary to effectuate the timely leasing and moving into the Facility.

Dated this 6<sup>th</sup> day of December, 2012

CLACKAMAS COUNTY BOARD OF COMMISSIONERS acting as the governing body of the  
North Clackamas Parks and Recreation District

  
\_\_\_\_\_

Chair

  
\_\_\_\_\_

Recording Secretary

'?G 0

CCP-NCP13 (9/94)

**LEASE AGREEMENT**

THIS LEASE AGREEMENT is made effective the 15<sup>th</sup> day of December, 2012, by and between Phoenix Investment Group, Inc., an Oregon corporation, hereinafter called the ("Landlord") and North Clackamas Parks & Recreation District, a county service district, hereinafter called the ("Tenant"). Landlord and Tenant may be jointly referred to herein as the 'parties' or individually referred to as a 'party'.

Landlord and Tenant hereby agree as follows:

1. **Description.** When used in the Lease Agreement the term "Leased Premises" or "Premises" shall describe a portion of the premises located at 6199 SE Lake Road, Milwaukie, Oregon 97222, in the County of Clackamas, pictorially represented on Exhibit A (attached hereto and hereby incorporated by reference) as Tract 2, and consisting of approximately 1.85 acres, and improved with a shop facility/warehouse, a general office, and asphalt yard. Landlord owns the adjacent real property represented on Exhibit A as Tracts 1 and 3 (herein sometimes collectively referred to as the "Adjacent Property" or individually as "Tract 1" or "Tract 3"). On the Premises there is a truck scale, the general location of which is depicted on Exhibit A. Tenant is not authorized to use the truck scales and Tenant shall permit the use of the truck scales by other tenants. Tenant shall not interfere with such right to use the truck scales, including the right of ingress and egress over the Premises for access to the truck scales.

Access to Tracts 1, 2 and 3 is by a common entrance, as shown in Exhibit A by the word "gate." Tracts 1, 2 and 3 shall each have the right to use the common entrance and the common roadway that serves Tracts 1, 2 and 3 which generally follows the line dividing 11-act 1 from Tracts 2 and 3 on Exhibit A.

2. **Term and Renewal.**

2.1 **Term.** Tenant shall lease the Premises for a term of 36 months beginning December 15, 2012 and ending December 14, 2015 ("Term"). Unless the context requires otherwise, "Term" shall include the initial Term of 36 months and the renewal term of 36 month if timely and properly exercised. p efforts.

2.2 **Renewal.** If the Lease is not in default at the time the option is exercised and is not in default when t1te renewal Term begins, Tenant shall have the option to renew this Lease for one (1) successive term of three (3) years, as follows:

2.2.1 The renewal term shall commence on the day following expiration of the initial Term.

2.2.2 The renewal option may be exercised by written notice to Landlord given not less than 180 days prior to the last day of the initial Term. The giving of such notice shall be sufficient to make the Lease binding for the renewal Term on both parties without further act of the parties subject to the rental increase for the renewal Term.

The terms and conditions of the Lease for the renewal Term shall be identical with the Term **except:** monthly Basic Rent will increase; and Additional Rent will increase; and Tenant will have no other option to renew this Lease. Monthly Basic Rent for the renewal term shall be at the market rate that Landlord then charges as mutually agreed by the parties; provided, however, that in no event shall: (1) the initial monthly Basic Rent for the renewal Term exceed the lesser of: the cumulative increase in the Portland, Oregon Consumer Price Index (CPI) all urban consumers, all items on the 1982 = 100 base compounded for the hree year.s of the initial Term or three percent (3%) per year compounded increase in the Basic Rent during the initial Term; but (2) the Basic Rent for the renewal Term will not be lower than \$6,016 per calendar month. The monthly Basic Rent for each year of the renewal Term will increase by 3%.

3. **Rent.**

3.1 **Basic Rent.** During the Term of the Lease Agreement, Tenant shall pay to the Landlord Basic Rent as follows:

Months 1-12 \$5,579  
Months 13-24 \$5,747  
Months 25-36 \$6,016

Basic Rent shall be paid in advance on the first day of each calendar month to the address of Landlord set out below or such other address as Landlord provides. Base Rent and Additional Rent shall be prorated as of the date of commencement and expiration if not on the first day of a calendar month.

3.2 **Additional Rent.** All taxes, insurance costs, utility charges, reasonable common area expenses, reasonable maintenance expenses for the Premises paid for by the Landlord, and any other sum which Tenant is required to pay Landlord or third parties by this Lease shall be Additional Rent. Currently, Additional Rent is charged at the rate of approximately \$0.11 per square foot but such amount for the Additional Rent is not fixed for the Term or the renewal Term and Landlord shall give Tenant at least thirty (30) days prior written notice of an increase in the Additional Rent amount. The Additional Rent is intended to compensate Landlord for all expenses relating to the Premises that Landlord pays or incurs such that the Lease is to be triple net meaning that taxes, insurance and all expenses of the Premises are charged to Tenant through the Additional Rent charges. The expenses on the Premises and the Adjacent Property shall be allocated as follows: 57.94% to the Tract 1, 28.17% to the Premises, and 13.89% to Tract 3. Any property tax reductions experienced by the Landlord because of Tenant's status as a municipal corporation shall be fully passed through to the Tenant alone and reduce its share of the triple net charges due.

4. **Deposit.** Upon execution of this Lease, Tenant shall pay to Landlord the total sum of \$12,810. The amount consists of the first month's rent of \$5,579, the first month's Additional Rent of \$1,215 and an additional sum of \$6,016 (the \$6,016 is a "Security Deposit").

The Security Deposit is held by Landlord to secure the faithful performance by Tenant of each term, covenant, and condition of this Lease. If Tenant at any time shall fail to make any payment or fail to keep or perform any term, covenant, and condition on Tenant's part to be made or performed or kept under this Lease, Landlord may, but shall not be obligated, to and without waiving or releasing Tenant from any obligation under this Lease, use, apply or retain the whole or any part of the Security Deposit: (i) to the extent of any sum due to Landlord; (ii) to make any required payment on Tenant's behalf; or (iii) to compensate Landlord for any loss, damage, attorneys' fees or expense sustained by Landlord due to Tenant's default as determined pursuant to Section 28. In such event, Tenant shall, within five days written demand by Landlord, remit to Landlord sufficient funds to restore the Security Deposit to its original sum; Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant complies fully with all the terms, covenants, and conditions of this Lease, and at the end of the term of this Lease, leaves the Premises in the condition required by this Lease, then the Security Deposit, less any sums owing to Landlord, shall be returned to Tenant. The amount of the Security Deposit will increase to the amount of the last month's Basic Rent that the Tenant is to pay for the renewal Term and is due and payable on the first day of November, 2015.

5. **Use.**

5.1 **Permitted Use.** The Premises shall be used only for Tenant's service and maintenance facility and related office uses reasonably related thereto, and for no other purpose without the prior written consent of the Landlord.

5.2 **Restrictions on Use.** In connection with use of the Premises, Tenant shall:

5.2.1 Conform to all applicable laws and regulations, as they now exist or may exist in the future, including but not limited to all Environmental Laws, regulations and ordinances, of any public authority affecting Tenant's use of the Premises, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

5.2.2 Refrain from any activity which would increase the costs to Landlord to insure the Premises against casualty losses;

5.2.3 Except as may be permitted under Section 5.1, refrain from any activity which would be reasonably offensive to Landlord and/or users of the Adjacent Property.

5.2.4 Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the prior written consent of Landlord, which will not be unreasonably withheld. Landlord has consented to installation of a sign on the fascia of the building provided Landlord is given accurate schematics and layout of the signs. No lighted signs, of any type, are permitted. Landlord's approval is contingent of Tenant obtaining appropriate governmental approval for the signage.

5.2.5 Refrain from discharging onto the Premises or Adjacent Property any Hazardous Material or waste or any toxic substance as defined by any law, rule, regulation or governmental regulatory body. For the purposes of this section, the proper storage, care, transport, use, generation, and/or disposal (collectively "Use") of any hazardous substance or material shall not be a "discharge" provided Tenant's Use shall be in conformance with all applicable laws, rules and regulations, including Environmental Laws and Tenant shall use the highest degree of care in the use, handling, storage and/or disposal of Hazardous Materials;

5.2.6 Conduct Tenant's operations in an environmentally clean and safe manner in compliance with all Environmental Laws as defined herein.

304 765



5.2.7 Restrict all parking of vehicles of the Tenant, its agents or employees that are visitors or users of the Premises to the Leased Premises.

5.2.8 Not interfere with and to allow free access to the truck scales at all times.

6. **Taxes and Utilities.**

6.1 **Property Taxes.** Tenant shall pay as due all taxes on Tenant's personal property located on the Premises. Landlord and Tenant agree that the payment of real property taxes by Tenant is normal and that not paying real property taxes may result in a below market rent. If Tenant wants a full or partial property tax exemption on either Tenant's personal or real property taxes, Tenant is responsible to obtain any such exemption at Tenant's sole cost and expense. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant.

6.2 **Special Assessments.** If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in installments, in which case all of the installments payable during the Term shall be treated the same as the real property taxes.

6.3 **New Charges or Fees.** If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Tenant shall pay such charge or fee. Tenant, however, shall have no obligation to pay any income, profits, or franchise tax levied on the net income derived by Landlord from this Lease.

6.4 **Utilities. Separately from the Additional Rent,** Tenant shall pay for all utilities, including without limitation, gas, heat, light, power, telephone, cable, internet, telecommunication, sewer, landscaping, and other utilities and services supplied to the Premises,

together with any taxes thereon.

7. **Landlord's Repairs and Maintenance.**

7.1 **During Term of Lease.** Subject to Tenant complying with Section 5.2, Landlord shall maintain in good condition the structural components of the Premises and the HVAC system and the plumbing provided any repairs and/or replacements are not required because of negligence or intentional acts or failure to act by the Tenant. Such maintenance, repair and/or replacement for the Premises are a charge passed through to Tenant as a part of the Additional Rent which shall be adjusted by the Landlord at least annually. All such charges for common areas, as the Landlord determines, are part of the Additional Rent. For purposes of this Subparagraph 7.1 "structural components" are the foundations, bearing and exterior walls (but not painting), and the roof of the Premises.

7.2 **Prior to Lease Commencement.** Landlord shall deliver the Premises to Tenant broom-clean and ready for occupancy with all water, sewer, electrical, gas, HVAC, roof and foundation systems in good working order and condition. Other than the provisions in the first sentence of this subparagraph, the Tenant takes the Premises AS-IS, WHERE-IS, and the Landlord has no obligation to make any Tenant improvements except the Landlord shall decommission the existing bridge crane.

8. **Tenant's Repairs and Maintenance.** Tenant shall maintain and keep the Premises and appurtenances thereto in the same condition as when received, except as otherwise provided in this Lease. Tenant shall surrender the Premises to Landlord in at least as good condition as when received, normal wear and tear excepted. Tenant shall be liable to Landlord for any damage to the Premises, including the truck scales and/or resulting from a breach of this Lease or the negligence or willful acts or omissions of Tenant, its agents and employees. Tenant's repair and maintenance obligation includes, but is not limited to: (a) the

repair of the asphalt yard areas (including repair of "spidering" as it occurs); (b) the exterior paint, as needed; (c) the interior paint, as needed; (d) all glass; (e) interior wall repair; (f) plumbing from the fixture to the sewer line; and (g) all other areas of the Premises except for those maintenance obligations specifically reserved to Landlord.

9. **Alterations.** Landlord must grant prior written approval to any alterations, additions, or changes made by Tenant to the Premises, which approval shall not be unreasonably withheld or unreasonably conditioned. At the time Landlord consents to any such alterations, additions, or changes to be made or placed in or on the Premises by Tenant, Landlord and Tenant shall agree as to whether such alterations may be removed by Tenant at the termination of this Lease. If such alterations are removed, the Tenant shall be responsible to restore the Premises to such a condition as to comply with this Lease.

10. **Insurance and Indemnity.**

**Liability Insurance.** Tenant shall, at Tenant's sole cost and expense, obtain and keep in force during the term of this Lease a liability self insurance, with single limit Bodily Injury and Property Damage coverage for the protection of Landlord and Tenant, against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such self insurance shall be in an amount not less than \$1,000,000.00 per occurrence. The policy shall also insure performance by Tenant of the indemnity provisions of this Lease. The limits of said self insurance shall not, however, limit the liability of Tenant hereunder. Tenant shall provide reasonable evidence that Landlord is an additional insured on Tenant's self insurance and an additional insured for any reinsurance that Tenant has for claims over one million dollars.

**10.2 Property Insurance.** The Landlord shall obtain and keep in force at all times during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, with extended coverage and loss of rents for the full replacement value of the Premises.

304 768

Such insurance shall provide for payment of loss there under to Landlord or to the holders of mortgages or deeds of trust on the Premises. Tenant shall insure its own personal property as it deems appropriate and Landlord has no liability for any loss and/or damages to Tenant's personal property. Landlord reserves the right to pass through the costs of the property insurance for the Premises to Tenant.

**10.3 Insurance Policies.** Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to herein.

**10.4 Indemnity.** Except to the extent arising out of Landlord's willful or gross negligent acts, Tenant shall indemnify, save, defend and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Premises or from the conduct of Tenant's business or from any other activity, work, or things done, permitted or suffered by Tenant in or about the Premises or elsewhere, and shall further indemnify, save and defend and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence or act of the Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, expenses, damages and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense.

**10.5 Waiver of Subrogation.** Neither the Landlord nor the Tenant shall be liable to the other for loss arising out of damage to or destruction of the Leased Premises, or the contents of any thereof, when such loss is caused by any of the perils which are or could be included within or insured against by a standard form of fire insurance with extended coverage. All such claims for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Landlord or

Tenant, or by any of their respective invitees, servants or employees. It is the intent and agreement of the Landlord and Tenant that the insurance carriers of the Landlord or Tenant shall not be entitled to subrogation under any circumstances against any party to this Lease. Neither the Landlord nor the Tenant shall have any interest or claim in the other's insurance policy or policies, or the proceeds thereof, unless specifically covered therein as a joint assured.

11. **Destruction of the Premises.** If, during the Term or any renewal hereof, the Premises or part thereof is destroyed or damaged, the Tenant shall give immediate notice thereof to Landlord. Upon payment of the insurance proceeds to Landlord, Landlord will use the insurance proceeds or such amount of the insurance proceeds as necessary to repair the damage unless this Lease is terminated as hereinafter provided. If the Premises are damaged to the extent that continued use during the course of repair would be reasonably impracticable, or if the damage exceeds fifty percent (50%) of the then value of the structure before the damage, and occurs within one (1) year before the end of the then-current Term of this Lease, then the Lease may be terminated by either the Tenant or the Landlord by written notice to the other within thirty (30) days of the damage. In the case of such termination, Landlord and Tenant shall have no further obligation under this Lease except that Tenant shall pay rent accrued through the date of the termination. Rent shall be partially abated during the repair of any damage to the extent the Premises are untenable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant. If Tenant has allowed the insurance to lapse or if the insurance proceeds are inadequate to repair and/or restore the Premises, Tenant shall be solely responsible for all expenses to restore the Premises to the same condition as the Premises were in prior to the loss.

12. **Condemnation.** If the Premises, or a substantial portion of the Premises, is taken under the power of eminent domain or under the threat of the exercise of such power for any

public or quasi-public use, such that its continued use by Tenant would be reasonably impracticable, then this Lease may be terminated as of the date the use of the Premises becomes impracticable. In case of such termination, Landlord and Tenant shall have no further obligations under this Lease except Tenant shall pay rent accrued through the date of termination. Any award or payment for taking or threatening to take all or a portion of the Premises shall be the property of Landlord.

13. **Default of Tenant.**

13.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

13.1.1 The vacation or abandonment of the Premises by Tenant.

13.1.2 The failure by Tenant to make any payment of Rent or any Additional Rent or other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant, provided, however, that Landlord shall not be obligated to send Tenant notice of nonpayment of Rent or Additional Rent any more frequently than once in any 12 month period. No notice is required for the second failure to pay Rent or Additional Rent *in* such 12 month period and Landlord may immediately seek its default remedies.

13.1.3 The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph 13.1.2 above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.

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13.1.4 (i) The making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days. Provided, however, in the event that any provision of this paragraph is contrary to any applicable law, such provision shall be of no force or effect.

14. **Remedies on Default.**

14.1 **Termination.** In the event of a default the Lease may be terminated at the option of Landlord by notice in writing to Tenant. If the Lease is not terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default. If the Lease is terminated, Tenant's liability to Landlord for damages shall survive such termination, and Landlord may reenter and take possession of the Premises. Landlord will give Tenant thirty (30) days written notice to remove all of Tenant's property from the Premises and if Tenant fails to remove any property left on the Premises, Landlord is entitled to remove the property from the Premises and dispose of such property. The Tenant is not excused from paying the Rent and Additional Rent for that time period nor is such period an extension of the Lease. Tenant shall maintain all insurance coverage during such period.

14.2 **Reletting.** Following reentry or abandonment, Landlord may relet the Premises and may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use

or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant which Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

14.3 **Damages.** In the event of termination on default Landlord shall be entitled to recover the following amounts as damages:

14.3.1 The loss of the rent reserved under the Lease, as and when such rent becomes due, from the date of default until a new tenant begins paying rent, or the Tenant proves with the exercise of reasonable efforts that a new tenant could have been secured.

14.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal and disposal of Tenant's property and fixtures, or any other expense occasioned by Tenant's failure to quit the premises upon termination and to leave them in the required condition, any remodeling and/or construction costs, court costs, broker commissions, including the portion of the leasing commission prorated over the Term as it applies to the unexpired Term of this Lease on default and advertising costs.

14.3.3 Other damages as permitted by law.

14.4 **Right To Sue More Than Once.** Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages shall bar a later action for damages subsequently accruing.

14.5 **Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

14.6 **Default by Landlord.** Landlord shall not be in default unless Landlord fails



to perform obligations required of Landlord within thirty (30) days after Tenant sends written notice to Landlord specifying how Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

14.7 **Interest and Late Charges.** Any rent or other payment required by Tenant by this Lease shall, if not paid within ten (10) days after its due date, bear interest at the rate of six percent (6%) per annum from the due date until paid. In addition, if any installment of Rent, Additional Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to 5% of such overdue amount as compensation to Landlord for additional costs incurred by Landlord by reason of said late payment. The parties hereby agree that such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder is not a penalty.

14.8 **Impounds.** In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of rent or any other monetary obligation of Tenant under the terms of this Lease, Tenant shall pay to Landlord, if Landlord shall so request, in addition to any other payments required under this Lease, a monthly advance installment, payable at the same time as the monthly Basic Rent, as estimated by Landlord, for real property tax and insurance expenses on the Premises which are payable by Tenant under the terms of this lease if any. Such fund shall be established to insure payment when due, before delinquency, of any or all such real property taxes and insurance premiums. If the amounts paid to Landlord by Tenant under the provisions of this paragraph are insufficient to discharge the obligations of Tenant to pay such

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real property taxes and insurance premiums as the same become due, Tenant shall pay to Landlord, upon Landlord's demand, such additional sums necessary to pay such obligations. All moneys paid to Landlord under this paragraph may be intermingled with other moneys of Landlord and shall not bear interest. In the event of a default in the obligations of Tenant to perform under this Lease, then any balance remaining from funds paid to Landlord under the provisions of this paragraph may, at the option of Landlord, be applied to the payment of any monetary default of Tenant in lieu of being applied to the payment of real property tax and insurance premiums.

15. **Cooperation.** Tenant shall cooperate with Landlord to insure the right of all tenants of the Adjacent Property are respected and observed and interfere with such tenants. Landlord shall make all reasonable efforts to insure that the tenants of the Adjacent Property cooperate to insure the rights of Tenant.

16. **Compliance.**

16.1 **Law.** Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the Premises and the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

16.2 **Environmental Compliance.** Tenant shall, at Tenant's own expense, comply with any current or future environmental statutes, ordinances, rules, regulations, and orders affecting Tenant's use of or operation at the Premises ("Environmental Laws"). Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws. Should the Authority determine that a plan for investigation, monitoring, cleanup,

containment, removal, storage or restoration work ("Remedial Work") be prepared and undertaken at the Premises or Adjacent Property because of any spills or discharges of hazardous materials, substances or wastes, or toxic substances (collectively "Hazardous Materials"), including but not limited to, petroleum-based products at the Premises which are caused by Tenant, its agents, its employees, or other parties during the term of this Lease, then Tenant shall, at Tenant's own expense, prepare and submit the required plans for the Remedial Work, including any required financial assurances to the Authority and Landlord and carry out the plans to the satisfaction of the Authority and Landlord. Tenant's obligations under this paragraph shall arise if there is any event or occurrence at the Premises caused by Tenant, its agents, employees or other parties, which requires compliance with the Environmental Laws. At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits and other documents required by Landlord to determine the applicability of the Environmental Laws to the Premises, and shall sign the affidavits and other documents promptly when requested to do so by Landlord. Tenant shall indemnify, defend and hold harmless Landlord from all fines, suits, procedures, claims, actions, cost, injury, damage, loss, expense, liabilities, diminution in property value, having litigation costs, remediation charges, monitoring and attorney's fees of any kind arising out of or in any way connected with any spills or discharges of Hazardous Materials, including but not limited, to petroleum-based products at the Premises caused by Tenant, Tenant's agents, Tenant's employees or other parties during the term of this Lease and from all fines, suits, procedures, claims, actions cost, loss, expense, injury, damage, liabilities, and attorney's fees of any kind arising out of Tenant's failure to provide all information, make all submissions and take all actions, including Remedial Work, required by the Authority under the Environmental Laws as a result of spills or discharges at the Premises or the Adjacent Property caused by the Tenant, its agents, its employees or other parties. Tenant's failure to abide by

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the terms of this paragraph shall be restrainable by injunction. The Indemnity provision of this Lease shall apply to all Tenant's obligations under this Section 16.

Tenant shall not install and/or use any underground or aboveground storage tanks for any purpose.

**16.3 3 Monitoring and Reporting Requirements.**

16.3.1 Tenant shall promptly supply Landlord with any documents, correspondence and submissions made by Tenant to any Authority that requires submission of any information concerning environmental matters or Hazardous Substances, materials or wastes or toxic substances.

16.3.2.2 Tenant shall promptly furnish to Landlord true and complete copies of any documents, correspondence and submissions provided by Tenant to the appropriate Authority and any notices, documents, reports, directives and correspondence provided by the Authority to Tenant. Tenant shall also promptly furnish to Landlord true and complete copies of all sampling, tests and other investigation results obtained from any samples, tests and other investigation taken at and around the Premises and the Adjacent Property.

**16.4 Conditions Precedent to Assignment and Sublease.**

Notwithstanding subparagraph 24.2, if Landlord consents to any assignment or sublet of the Leased Premises under paragraph 24, Tenant shall remain responsible for all obligations under this Section 16.

**16.5 Surrender.**

16.5.1 On the last day of any Term hereof, or on any sooner termination, Tenant shall, at Tenant's own expense, have complied with any Environmental Laws affecting Tenant's usage or operation at the Premises.

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16.5.2 If at any time Landlord causes the Premises to be sampled, tested or otherwise investigated for environmental taints, and the sampling, tests, or other investigations indicate that Hazardous Materials or other adverse environmental conditions are present at the Premises and that release or discharge of the Hazardous Materials or other adverse environmental conditions occurred during this Lease, then in addition to being responsible to pay for the investigation and cleanup of such releases or discharges or other adverse environmental conditions, Tenant shall pay for the cost of the sampling, testing and other investigation

17. **Successor Parties.** This Lease, and all provisions thereof, shall be binding upon and inure to the benefit of the heirs, administrators, executors, and permitted successors and assigns of the parties hereto.

18. **Notices.** All notices as required by any of the terms and conditions of this Lease Agreement shall be deemed given when notice is prepared, adequately addressed, and deposited in the United States Mail, postage prepaid. Notice to Landlord and Tenant are adequately addressed as follows:

Landlord	Phoenix Investment Group, Inc. 16074 SE 106 <sup>th</sup> Ave., #100 Clackamas, Oregon 97015
Tenant	North Clackamas Parks and Recreation District 150 Beaver Creek Rd., 4 <sup>th</sup> Floor Oregon City, OR 97045 Attn: Director

19. [Intentionally Omitted]

20. **Time of Essence.** Time is of the essence.

21. **Subordination.**

21.1 This Lease, at Landlord's option, shall be subordinate to any ground lease,

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mortgage, deed of trust or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground landlord shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

21.2 Tenant agrees to execute any documents required to effectuate an attornment, subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Should Tenant fail to execute such documents within 10 days after written demand, Landlord may execute such documents on behalf of Tenant as Tenant's attorney-in-fact.

**22. Estoppel Certificate.**

22.1 Tenant shall at any time upon not less than ten (10) days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any defaults are claimed. Any such

statement may be conclusively relied upon by any prospective purchaser or encumbrances of the Premises.

22.2 At Landlord's option, Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's rent has been paid in advance.

22.3 If Landlord desires to finance, refinance, or sell the Premises, or any part thereof, Tenant hereby agrees to deliver to any lender or purchaser designated by Landlord such financial statements of Tenant as may be reasonably required by such lender or purchaser at Landlord's cost. Such statements shall include the past three years' publicly available audited financial statements of Tenant.

23. **Landlord's Access.** Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the same, doing any repairs, replacements or monitoring that Landlord deems necessary, showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Landlord may deem necessary or desirable, or as are Landlord's responsibility hereunder. Landlord may at any time place on or about the Premises any "For Sale" signs and Landlord may at any time during the last year of the Term hereof place on or about the Premises any "For Lease" signs, all without rebate of rent or liability to Tenant.

24. **Assignment and Sublease.**

24.1 Landlord's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises, without Landlord's prior written consent, which

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consent shall not be unreasonably withheld.

24.2 No Release of Tenant. Landlord's consent to subletting or assignment shall not necessarily release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the Rent and Additional Rent and to perform all other obligations to be performed by Tenant hereunder, but shall be in accordance with the terms and conditions of any consent to sublease or assignment agreement the Landlord and Tenant may execute. The acceptance of Rent and/or Additional Rent by Landlord from any other person and/or entity shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant, in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said assignee.

24.3 Involuntary Assignment in Bankruptcy. If this Lease is deemed to be property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code 11 USC §101, et seq. (the "Bankruptcy Code") any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. §101 et seq. shall be deemed without further act or deed to assume all of the obligations arising under this Lease. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

24.4 Holdover

24.4.1 If Landlord withholds its consent to a holdover tenancy by Tenant



and Tenant does not vacate the Premises at the time required, such holdover shall be deemed wrongful and Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and at a rental rate equal to 150 percent of the rent last paid by Tenant during the Term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply.

24.4.2 Should the parties agree to a holdover tenancy by Tenant, such holdover shall be on a month-to-month basis on the same terms and conditions, including Rent and Additional Rent. The tenancy shall be terminable upon thirty (30) days written notice by either party.

24.4.3 Attorney's Fees. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any act Tenant proposes to do then Tenant shall pay Landlord's reasonable attorneys fees and other costs incurred in connection therewith to the extent they exceed \$200.

25. **Survival.** The provisions of Sections 5.2.1, 5.2.4, 5.2.5, 5.2.6, 6.1, 6.4, 8, 9, 10 14.3 and 16 survive the expiration or earlier termination of the Lease.

26. **Broker.** Landlord represents and warrants to Tenant, and Tenant represents and warrants to Landlord, that no broker or finder has been engaged by them, respectively, except for Capacity Commercial Group who represented Landlord and except for KW Commercial who represented Tenant. Upon full execution of this Lease and payment of the Deposit, Landlord shall pay to Capacity Commercial Group the total sum of \$6,243.12 and to Keller Williams Commercial the total sum of \$6,243.12. These payments are the only amounts

**28.2 Binding Arbitration.** After exhaustion of the preceding processes, any remaining dispute shall be submitted to binding arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Clackamas County.

IN WITNESS WHEREOF, the respective parties have executed this Lease as of the day and year first written above.

**Phoenix Investment Group, Inc.**



By: Todd Call, President

**North Clackamas Parks and Recreation District**



By: Gary Barth, Director



**SECOND AMENDMENT/ EXTENSION  
TO  
LEASE AGREEMENT  
BETWEEN  
PHOENIX INVESTMENT GROUP, INC.  
AND  
NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

This is a Second Amendment /Extension to that certain Lease Agreement originally dated effective as of the 15<sup>th</sup> day of December, 2012 and subsequently amended to be effective as of December 26, 2012 between Phoenix Investment Group, Inc. defined as the "**Landlord**" there in and North Clackamas Parks & Recreation District defined as the "**Tenant**" therein. Landlord and Tenant are jointly referred to as the "**Parties**". The Lease and the First Amendment thereto shall be together referred to herein as the "**Lease**".

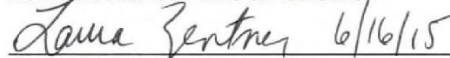
1. **Extension.** Section 2.2 of the Lease provides for a single three (3) year extension of the Term upon terms, provisions and conditions set forth therein. The Landlord acknowledges the timely exercise of the option to renew the Lease. The expiration date of the Lease will now be December 31, 2018. There is no further/additional option or right to renew or extend the Lease beyond December 31, 2018.
2. **Basic Rent on Renewal.** Beginning with the January 1, 2016 payment, Basic Rent increases to \$6,196 per calendar month for 2016; to \$6,382 per calendar month for 2017; and to \$6,573 per calendar month for 2018 [Amending Section 3.1 of the Lease]. All Basic Rent increases are effective as of January 1 of each calendar year of the Renewal Term and without further notice to Tenant.
3. **Additional Rent.** Until the notice in Section 3.2 of the Lease is given, the Additional Rent remains at the sum of \$600 per calendar month, payable with and in addition to each monthly Basic Rent payment.
4. **Deposit.** The Security Deposit set out in Section 4 of the Lease is increased to \$6,573. The difference between the current Security Deposit [\$6,016] and the Security Deposit on Renewal [\$557] shall be paid to Landlord not later than November 1, 2015 as set out in the Lease.
5. **No Improvements.** Landlord has not agreed to make any improvements to the Premises.
6. **Affirmation of other terms.** Except as otherwise amended herein, the Lease remains in full force and effect. If there is a conflict between the terms of the Lease and this Second Amendment / Extension, the terms of this Second Amendment/ Extension control.

**Phoenix Investment Group, Inc.**



By: Todd Call, President  
Dated:

**North Clackamas Parks & Recreation**

 6/16/15

By: Gary Barth, Director  
Dated: 6CS District

2015

## RECORDING MEMO

	New Agreement/Contract
<b>X</b>	Amendment/Change/Extension
	Policy Reports
	Other

**ORIGINATING COUNTY DEPARTMENT:** North Clackamas Parks & Recreation District

**PURCHASING FOR:** N/A

**OTHER PARTY TO CONTRACT/AGREEMENT:** Phoenix Investment Group, Inc.

**BOARD AGENDA DATE:** 7/12/2018

**AGENDA ITEM NUMBER:** IV.2 - - - - -

**PURPOSE:** Approval of Amendment No. 3 to a Lease Agreement with Phoenix Investment Group

Please return to **NCPRD - Attn: Caroline Patton** after recording.

Clackamas County Official Records  
Sherry Hall, County Clerk  
Commissioners/Judicial  
Agreements & Contracts

**2018-1164**

**07/23/2018 2:32:44 PM**

**THIRD AMENDMENT/ EXTENSION  
TO  
LEASE AGREEMENT  
BETWEEN  
PHOENIX INVESTMENT GROUP, INC.  
AND  
NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

This is a Third Amendment /Extension to that certain Lease Agreement originally dated effective as of the 15<sup>th</sup> day of December, 2012, subsequently amended by a First Amendment thereto dated to be effective as of December 26, 2012 and expiring on December 31, 2015; and further amended by a Second Amendment thereto dated to be effective as of December 31, 2015 and expiring as of December 31, 2018. The Lease, the First Amendment thereto and the Second Amendment thereto shall be collectively referred to herein as the "**Lease**". The Lease is by and between Phoenix Investment Group, Inc. defined as the "**Landlord**" and North Clackamas Parks & Recreation District defined as the "**Tenant**". Landlord and Tenant are jointly referred to as the "**Parties**".

**1. Extension.** The Lease specifically contains no further/additional option or right to renew or extend the Lease beyond the current expiration date of December 31, 2018. Notwithstanding that provision, the Landlord and Tenant agree to the following changes:

a. Section 2.1 of the Lease is amended by deleting it in its entirety and adding in lieu thereof the following:

2.1 **Term.** Tenant shall lease the Premises for a term of 36 months beginning January 1, 2019 and ending December 31, 2021 ("**Term**"). Unless the context requires otherwise, "**Term**" shall run from January 1, 2019 through December 31, 2021 and the Renewal Term of 36 months if timely and properly exercised by Tenant and accepted by Landlord as provided hereinafter shall run from January 1, 2022 through December 31, 2024.

b. Section 2.1 of the Lease is amended by deleting it in its entirety and adding in lieu thereof the following:

2.2 **Renewal.** If the Lease is not in default at the time the option is exercised and is not in default when the Renewal Term begins, Tenant shall have the option to renew this Lease for one (1) successive term of three (3) years, only upon the following terms and conditions;

2.2.1 The renewal term shall commence on January 1, 2022 and expire December 31, 2024 ("**Renewal Term**"); and

2.2.2 The renewal option may only be exercised by written notice to Landlord received by Landlord not later than July 2, 2021; and

2.2.3 Not later than September 1, 2021, the Landlord notifies Tenant in writing that the Landlord agrees to extend the Lease for the Renewal Term. The Landlord's written notice to Tenant that Landlord agrees to the extension, shall be sufficient to make the Lease binding for the Renewal Term on both Parties without further act of either of the Parties except the following terms, conditions and provisions shall apply for the Renewal Term:

2.2.3.1. The terms and conditions of the Lease for the Renewal Term shall be

Identical with those of the Term **except:** (i) monthly Basic Rent will increase as set out in paragraph numbered 2 of this Third Amendment/Extension; (ii) Additional Rent will increase in accordance with the Landlord's notices as provided in the lease; (iii) the Security Deposit will increase as set out in paragraph numbered 4 of this Third Amendment/Extension; and (iv) Tenant will have no other option to renew/extend this Lease.

**2. Basic Rent on Renewal.** Section 3.1 of the Lease is deleted in its entirety and in lieu thereof is added the following:

<u>Basic Rent for Calendar Year</u>	<u>Monthly Amount</u>
2019	\$6,770
2020	\$6,973
2021	\$7,182

<u>Basic Rent for Renewal Term<sup>1</sup></u>	<u>Monthly Amount</u>
2022	\$7,397
2023	\$7,619
2024	\$7,840

<sup>1</sup> If timely exercised and accepted by Landlord as provided in 2.2.3 above.

**3. Additional Rent.** Until the notice in Section 3.2 of the Lease is given, the Additional Rent is \$600.00 for every calendar month of the Term and if timely exercised and accepted by Landlord, the Renewal Term, and is payable with and in addition to each monthly Basic Rent payment.

**4. Deposit.** The Security Deposit set out in Section 4 of the Lease is increased to \$7,182. The difference (\$6091 between the current Security Deposit [\$6,573] and the Security Deposit for the renewal (\$7,182) shall be paid to Landlord not later than November 1, 2018. If the option to renew is timely exercised by Tenant and accepted by Landlord as provided herein, then the Tenant shall, by November 1, 2021, pay an additional Security Deposit amount of \$666 to Landlord.

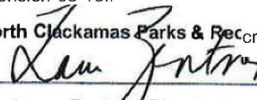
**5. No Improvements.** Landlord has not agreed to make any improvements to the Leased Premises during the Term or the Renewal Term, if any.

**6. Affirmation of other terms.** Except as otherwise amended herein, the Lease remains in full force and effect. If there is a conflict between the terms of the Lease and this Third Amendment / Extension, the terms of this Third Amendment / Extension control.

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By: Todd Call, Pre nt

North Clackamas Parks & Recreation District



By: Laura Zentel, Director  
Business Community Services  
Authorized Signer