



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of February 3, 2016

Please see directions for completing this document on the next page.

DATE: January 13, 2015

FROM: James Lewis Property & Facilities 385-1414

TITLE OF AGENDA ITEM:

Consideration of Board Signature of Document 2016-065, a Lease between Deschutes County and Quicksilver Contracting Company.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

In October 2014, Deschutes County entered into an Intergovernmental Agreement (Deschutes County Document #2014-568) with the City of La Pine for the marketing, leasing and sale of County owned industrial lands within the City limits. This included approximately 160 acres of Industrial zoned land intended for Economic Development purposes. The IGA was executed on the basis that City is better able to locally assess, market and respond to prospective purchasers and Economic Development opportunities in the City, thereby serving the entirety of southern Deschutes County. Through the IGA, the City has the authority for the marketing, promotion, leasing and sale negotiations for the Real Property for Economic Development, but the County will retain ownership - thus, the County must sign and authorize all leases and sales negotiated by the City. Upon lease or sale, the County and City will share the proceeds from the sale (50% each, with the City to absorb hard costs associated with the sale).

The attached Lease is with Quicksilver Contracting Company for the use of approximately 4.67 acres of industrially zoned land in the La Pine Industrial Park. Quicksilver operates a logging and timber operations related business and needs the land for staging and processing of timber as related to their business. The term of the Lease is from the date the Lease is signed (effective date) through December 31, 2020 (a period of 5 years).

FISCAL IMPLICATIONS:

Annual rental income is \$4,800 (\$400/month), with this amount being split equally between Deschutes County and the City of La Pine per the IGA (\$2,400 annually to County and City).

RECOMMENDATION & ACTION REQUESTED:

Staff recommends signature of Document 2016-065.

ATTENDANCE: James Lewis

DISTRIBUTION OF DOCUMENTS:

One fully signed original returned to James Lewis for copies to the City of La Pine and Lessee.

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

Date: January 13, 2016

Department: Property & Facilities

Contractor/Supplier/Consultant Name: Quicksilver Contracting Co.

Contractor Contact: John Williams

Contractor Phone #: 541-419-9446

Type of Document: New Lease

Goods and/or Services: N/A

Background & History: In October 2014, Deschutes County entered into an Intergovernmental Agreement (Deschutes County Document #2014-568) with the City of La Pine for the marketing, leasing and sale of County owned industrial lands within the City limits. This included approximately 160 acres of Industrial zoned land intended for Economic Development purposes. The IGA was executed on the basis that City is better able to locally assess, market and respond to prospective purchasers and Economic Development opportunities in the City, thereby serving the entirety of southern Deschutes County. Through the IGA, the City has the authority for the marketing, promotion, leasing and sale negotiations for the Real Property for Economic Development, but the County will retain ownership - thus, the County must sign and authorize all leases and sales negotiated by the City. Upon lease or sale, the County and City will share the proceeds from the sale (50% each, with the City to absorb hard costs associated with the sale).

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Agreement Starting Date: February 3, 2016 **Ending Date:** January 31, 2021

Annual Value or Total Payment: \$400/month base rent – (\$200 to Deschutes County)

N/A – statutory coverage

X Insurance Certificate Received (check box)

Insurance Expiration Date: February, 2017

N/A

Check all that apply:

- ☐ RFP, Solicitation or Bid Process
- ☐ Informal quotes (<\$150K)
- ☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

N/A

Funding Source: (Included in current budget? ☐ Yes ☐ No

If **No**, has budget amendment been submitted? ☐ Yes ☐ No

Is this a Grant Agreement providing revenue to the County? ☐ Yes ☒ No

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: ☐ Yes ☐ No

Contact information for the person responsible for grant compliance: Name:

Phone #:

Departmental Contact and Title: James Lewis **Phone #:** 541-385-1414

Department Director Approval:

Signature

Date

Distribution of Document: One fully signed original returned to James Lewis for permanent records and copy to tenant.

Official Review:

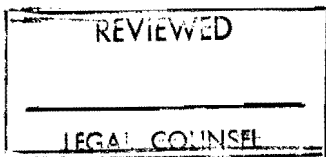
County Signature Required (check one): XXX BOCC ☐ Department Director (if <\$25K)

☐ Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. _____)

Legal Review _____

Date _____

Document Number **2016-065**



INDUSTRIAL LEASE

THIS INDUSTRIAL LEASE ("Lease"), made and entered into by and between **DESCHUTES COUNTY**, a political subdivision of the State of Oregon ("Lessor"), and **QUICKSILVER CONTRACTING COMPANY**, an Oregon corporation ("Lessee"). Lessor and Lessee are referred to herein as the "Parties."

RECITALS:

- A. Lessor is a party to an Intergovernmental Agreement with the City of La Pine ("City") dated October 29, 2014 (the "Agreement").
- B. Pursuant to the Agreement, the Lessor vested City the full power and authority for the marketing, promotion and sale negotiations for the real property commonly known as the La Pine Industrial Park for economic development purposes. Lessor retained ownership of the real property.
- C. Subject to the terms and conditions of this Lease, the Parties desire to enter into an agreement to lease a portion of the real property.

WITNESSETH:

Lessor leases to Lessee approximately 4.57 acres (199,069 sq. ft.), more or less, of real property (the "Property") located in the La Pine Industrial Park in the City of La Pine, Deschutes County, Oregon, known as:

A portion of map and tax lot 221013C001400, legal description and map attached as Exhibit A, incorporated herein by this reference.

1. TERM AND RENEWAL. The effective date of this Lease shall be February 1, 2016, or the date on which each party has signed the Lease (the "Effective Date"), whichever is later, and shall continue through January 31, 2021 a period of five (5) years, unless sooner terminated. If Lessee is not then in default of this Lease (as defined in Section 19), Lessee will have the option to renew the Lease, at such rental rate to be mutually agreed in writing between Lessor and Lessee, for an additional five (5) years by notifying Lessor in writing sixty (60) days prior to the end of the current 60-month term; provided, however, if the Parties are unable to mutually agree in writing within thirty (30) days of the written notice to renew to a rental rate for the renewal period, the option to renew shall be forfeited. This Lease does not grant or provide Lessor any other rights of any kind or nature associated with the Property. Notwithstanding anything contained in this Agreement to the contrary, Lessor shall have the right to terminate this Lease upon one hundred eighty (180) days' notice to Lessee. The term of this Lease as referred herein includes the initial term and any properly completed renewals as mutually agreed in writing between Lessor and Lessee.

2. POSSESSION. Lessee's right to possession and obligations under the Lease shall commence as of the Effective Date of this Lease, except as otherwise provided herein.
3. CONDITION OF PROPERTY. Lessor and Lessor's Agents (as defined below) have made no warranties or representations regarding the condition of the Property, including, without limitation, the sustainability of the Property for intended uses. Lessor has no obligation to repair, alter, and/or construct any improvements on the Property. Lessee has inspected and accepts the Property in its "AS IS" condition upon taking possession. Lessor will have no liability to Lessee, and Lessee will have no claim against Lessor, for any damage or injury or loss of use caused by the condition of the Property. Lessee is solely responsible for thoroughly inspecting the Property and ensuring that it is in compliance with all Legal Requirements (as defined below).
4. RENT. Lessee shall pay to Lessor as monthly rent, without offset, the sum of Four Hundred Dollars (\$400.00) commencing with the date specified in Section 1. Rent may be prorated for the first partial month. Rent shall be payable, in advance, on the first day of each month without notice or demand, by mail to Deschutes County Property & Facilities Dept., P.O. Box 6005, Bend, OR 97708-6005, or by hand delivery to Deschutes County Property & Facilities Dept., 14 NW Kearney Avenue, Bend, OR 97701, or at such other place as may be designated in writing by Lessor.
5. ADDITIONAL RENT. As additional rent, Lessee shall pay, on or before the date they become due, the following amounts without notice or demand of Lessor:
 - A. All taxes and assessments upon Lessee's personal property located on the Property.
 - B. All real property taxes for the leased Property, prorated to reflect the term of this Lease.
 - C. All charges for heat, light, power, sewage, water, garbage disposal, and other services or utilities used by Lessee on the Property.
 - D. The cost of all insurance for which Lessee is required to pay.
 - E. All amounts which Lessee is required to reimburse Lessor for expenses incurred by Lessor in discharging Lessee's obligations.
 - F. All other amounts which the Lessee is required to pay by any other provisions of this Lease.
6. PERMITTED USE. The Property shall be used for storing of logs, wood products and equipment associated with logging and timber operations ("Permitted Use") and for no other purpose without Lessor's prior written consent which Lessor may withhold in its sole discretion. If the Permitted Use is prohibited by law or governmental regulations, this Lease shall terminate. Notwithstanding anything

contained in this Lease to the contrary, Lessee will operate its business subject to and in accordance with all applicable Legal Requirements (as defined below).

7. **RESTRICTIONS ON USE.** In connection with the use of the Property, Lessee shall:

- A. Obtain Lessor's written approval, which Lessor may withhold in its sole discretion, in advance of any development plans, layout plans, construction, reconstruction, or alteration of improvements; or revision of layout or construction plans for the Property.
- B. Maintain any fence, improvements and structures on the Property, if any, and Property to standards of repair, orderliness, neatness, sanitation, and safety acceptable to Lessor, and shall not allow solid wastes to accumulate on the Property.
- C. Conform to all Legal Requirements of any public authority affecting the Property and the use of Property, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use of the Property. For purposes of this Lease, the term "Legal Requirement(s)" means any and all rules, regulations, covenants, conditions, restrictions, easements, declarations, laws, statutes, liens, ordinances, orders, codes, rules, and regulations directly or indirectly affecting the Property and/or Lessee's business, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.
- D. Refrain from any use which would be reasonably offensive to the Lessor, other tenants, or owners or users of adjoining Property, or which would tend to create a nuisance or damage the reputation of the Property, including but not limited to, creating excessive dust or noise on the Property or maintaining a fire on the Property. Nothing herein shall be construed to prohibit normal activities necessary to utilize the Property for its intended use.
- E. Refrain from making any unlawful or offensive use of said Property or to suffer or permit any waste or strip thereof.
- F. Exercise diligence in protecting from damage the Property and property of Lessor covered by and used in connection with this Lease.
- G. Refrain from the disposal, spilling or discharging of any oil, gasoline, diesel fuel, chemicals, or other pollutants on the leased Property. In the event of such spills, Lessee shall undertake any and all necessary actions to contain and remove such pollution from the leased Property.

8. **LESSEE'S OBLIGATIONS.** The following shall be the responsibility of the Lessee at Lessee's sole cost:

- A. Comply with all Legal Requirements, including, without limitation, obtaining a driveway permit.
 - B. Arrangement for and delivery to the Property, if necessary, of all water, sewage, gas, electrical, and other utility services deemed necessary by Lessee.
 - C. Structural repairs and maintenance of any fences, buildings, water, sewage, gas and electrical services, and other utility services on the Property.
 - D. Any repairs necessitated by the activities or negligence of Lessee, its agents, employees or invitees on or in connection with the Property.
 - E. Any repairs or alterations required under Lessee's obligation to comply with Legal Requirements and regulations as set forth in "Restrictions on Use" above.
 - F. Pay Lessor for any damage resulting from the activities or negligence of Lessee, its agents, employees or invitees on or in connection with the Property, or from the violation of any provision or provisions of this Lease.
9. INSPECTION OF PROPERTY. During the term of this Lease, Lessor shall have the right to inspect the Property in the Lessee's presence at any reasonable time or times after giving reasonable notice to Lessee.
10. REPAIRS. Lessee takes the Property in its "AS IS" condition. Lessee will at all times keep the Property in a safe and clean condition and make all repairs during the term of the Lease necessary to maintain the Property in good condition.
11. INDEMNIFICATION OF LESSOR. Lessee will indemnify, defend, and hold Lessor and Lessor's current and future officers, employees, contractors, and agents (collectively, "Lessor's Agents") and City and City's current and future officers, employees, contractors, and agents (collectively, "City's Agents") harmless for, from, and against any and all claims, losses, damages, and/or liabilities arising out of or related to, whether directly or indirectly, the following: (a) any and all activity of Lessee and/or Lessee's members, managers, officers, employees, agents, and/or contractors (collectively, "Lessee's Agents") on or at the Property; (b) any condition of the Property (including, without limitation, any improvements constructed thereon) that is caused by Lessee and/or Lessee's Agents while the Property are in the possession or under the control of Lessee; and/or (c) Lessee's breach and/or failure to perform any Lessee obligation, covenant, representation, and/or warranty under this Lease. Lessee's indemnification obligations under this Section 11 will survive the expiration or termination of this Lease.
12. ENVIRONMENTAL POLLUTION. The provisions of this Section 12 supplement other lease provisions that might apply concerning Lessee's obligations, responsibilities and liabilities for environmental pollution, present and future, and for compliance with the laws, regulations or orders of any governmental agency concerning environmental pollution, present and future, on the Property. To the

extent that the provisions of this Section 12 conflict with any such other provisions, the provisions of this Section 12 shall control.

Where terms of this Section 12 use terms that are found in applicable state and federal environmental pollution laws, those terms shall have the same meaning as they have in those state and federal laws.

Except as undertaken in the ordinary course of conducting its Permitted Use, Lessee covenants that during the term of this Lease, Lessee will not generate, store, process or dispose of or release or discharge into the environment hazardous, toxic, radioactive or other dangerous substances on or about the leased Property in any amount, nor will Lessee allow such prohibited activities to take place on the leased Property during the lease term.

If Lessee knows, discovers, or has reasonable cause to believe, that a hazardous, toxic, radioactive or other substances has come to be located in, on, under or about the Property, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such hazardous, toxic, radioactive or other substances. In addition, Lessee shall contain and remove in conformance with applicable state and federal law any releases of hazardous, toxic, radioactive or other substances regulated under state or federal pollution control laws that are found on or in the Property during the term of this Lease or any releases of such materials found off the premises that originated from the Property during the lease term. If such release of hazardous, toxic, radioactive or other substances regulated under state and federal pollution control laws is caused, materially contributed to, or permitted directly or indirectly by Lessee or Lessee's Agents, Lessee shall be responsible for the cost of removal of such substances and any remediation that may be required.

Lessee shall remove in conformance with applicable state and federal law any releases of hazardous, toxic, radioactive or other substances regulated under state or federal pollution control laws if such discharge or release was caused directly or indirectly, materially contributed to, or permitted by Lessee or Lessee's Agents.

Lessee will indemnify, defend, and hold Lessor and Lessor's Agents and City and City's Agents harmless for, from, and against any and all claims, demands, losses, causes of action or suit for damages, reimbursements, liabilities and/or any other cost of compliance, including, but not limited to, remedial action costs, removal costs, natural resources damages, penalties, punitive damages, interest costs, attorney fees, expert fees, and damages of any kind to third parties, arising, during or after the lease term, from the discharge, release or threatened release on or in the Property of any hazardous, toxic or radioactive substances, that was caused or materially contributed to by Lessee and/or Lessee's Agents.

13. **PARTIAL TAKING.** If a portion of the Property is condemned and Section 14 entitled "Total Taking" does not apply, the Lease shall continue on the following terms:

- A. Lessor shall be entitled to all of the proceeds of condemnation and Lessee shall have no claim against Lessor as a result of the condemnation.
 - B. Lessor shall proceed as soon as reasonably possible to make such repairs and alterations to the Property as reasonably practicable to return the Property to its condition existing at the time of the condemnation, but in no event shall Lessor be liable for repairs in excess of condemnation proceeds awarded to and received by Lessor. The Lessor may, but shall not be required to, perform alterations prior to the actual taking after the portion to be taken has been finally determined. Rent shall be abated to the extent the Property is untenable during the period of alteration and repair.
 - C. After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Lessor to restore the balance of the property in anticipation of taking, the rent shall be reduced commensurately with the reduction in value of the leased Property as an economic unit on account of the partial taking. If the parties are unable to agree upon the amount of the reduction of rent, the amount shall be determined by arbitration.
 - D. If a portion of the Lessor's Property not included in the leased Property is taken and severance damages are awarded on account of the leased Property, or an award is made for detriment to the leased Property as a result of change of grade of adjacent streets or other activity by a public body not involving a physical taking of any portion of the land, this shall be regarded as a partial condemnation of which subparagraphs (A) and (C) of "Partial Taking" above apply, and the rent shall be reduced to the extent of diminution of value of the Property as though a portion had been physically taken.
14. TOTAL TAKING. If a condemning authority takes all of the Property or a portion sufficient to render the Property reasonably unsuitable for the use which the Lessee was then making of the Property, the Lease shall terminate as of the date the title vests in the condemning authority. Lessor shall be entitled to all of the proceeds of condemnation and the Lessee shall have no claim against Lessor as a result of the condemnation.
15. SALE IN LIEU OF CONDEMNATION - DEDICATION TO THE PUBLIC. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purpose of this Section 15 as a taking by condemnation. Dedication to the public, sale, or transfer of all or a portion of the Property of Lessor to the State of Oregon, its political subdivisions or United States of America, shall be treated as a Total Taking or Partial Taking, as applicable.

16. LIENS.

- A. Except with respect to activities for which the Lessor is responsible, the Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the leased Property and shall keep the Property free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.
- B. Lessee may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within thirty (30) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or a sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under a lien.

17. INSURANCE.

- A. It is expressly understood that Lessor and City shall not be responsible for carrying insurance on any property owned by Lessee and/or the Property.
- B. Lessee will be required to carry fire and casualty insurance on Lessee's personal property on the Property.
- C. Lessee shall carry commercial general liability insurance, on an occurrence basis; with a combined single limit of not less than \$1,000,000 each occurrence, with an annual aggregate limit of \$2,000,000. Lessee shall provide Lessor with a certificate of insurance, as well as an endorsement, naming Lessor and Lessor's Agents as well as City and City's Agents, as an additional insured. There shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage during the term of this lease.

18. ASSIGNMENT AND SUBLEASE.

Lessee will not sell, assign, mortgage, sublet, lien, convey, encumber, and/or otherwise transfer (whether directly, indirectly, voluntarily, involuntarily, or by operation of law) all or any part of Lessee's interest in this Lease and/or in the Property (collectively, "Transfer") without Lessor's prior written consent. Upon any approved Transfer, (a) the terms and conditions of this Lease will in no way be deemed to have been waived or modified, (b) consent will not be deemed consent to any further Transfer, (c) the acceptance of Rent by Lessor from any other person will not be deemed to be a waiver by Lessor of any provision of this Lease, and (d) no Transfer relating to this Lease, whether with or without Lessor's consent, will modify, relieve, or eliminate any liability or obligations

Lessee or any guarantor of this Lease may have under this Lease. For purposes of this Lease, a "Transfer" will be deemed to include the sale, assignment, encumbrance, and/or transfer - or series of related sales, assignments, encumbrances, and/or transfers - of fifty-one percent (51%) or more of the shares or other ownership interest of Lessee, regardless of whether the sale, assignment, encumbrance, and/or transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence. Any Transfer which does not comply with this Lease will be void and will constitute a breach of this Lease.

19. **DEFAULT.** Each of the following will constitute an "Event of Default" and a breach of this Lease:
- A. Failure of Lessee to pay any rent or other charge within ten (10) days after it is due.
 - B. Failure of Lessee to perform or comply with any term, condition, and/or covenant or fulfill any obligation of the Lease (other than the payment of rent or other charge, cost, and/or expense) within thirty (30) days after written notice is mailed by Lessor specifying the nature of the default with reasonable particularity. If the failure is in such a nature that it cannot be completely remedied within the thirty (30) day period, the failure will not be a default if Lessee begins correction of the failure within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable, so long as a full cure of said default is made within ninety (90) days of the original written notice.
 - C. Attachment, execution, levy, and/or other seizure by legal process of any right or interest of Lessee under this Lease if not released within thirty (30) days.
 - D. Lessee becomes insolvent within the meaning of the United States Bankruptcy Code, as amended from time to time; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days.
 - E. Failure of Lessee for thirty (30) days or more to occupy and use the Property for the Permitted Uses under this Lease.
 - F. Failure of Lessee for thirty (30) days or more to use the property located at map and tax lot 221013C001300 in Deschutes County, Oregon for the operation of Lessee's forest products business.

20. REMEDIES ON DEFAULT.

- A. Upon the happening of an Event of Default, the Lease may be terminated at the option of the Lessor by notice in writing to Lessee. The notice may be given at any time after any grace period for default given under Section 19. All of Lessee's rights in the Property and in all improvements on the Property will terminate as of the date of termination and/or expiration. Promptly after such notice, Lessee will surrender and vacate the Property and all improvements in broom clean and in good condition. Lessor may reenter and take possession of the Property and of all improvements and eject some or all parties in possession except any sublessee qualifying under any nondisturbance agreement by Lessor. Lessor will have all rights and remedies available to Lessor under this Lease, at law, and in equity. Termination under this Section 20(A) will not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee. If the Property is abandoned by Lessee in connection with a default, termination shall be automatic and without notice.
- B. In any Event of Default, the Lessor, or those having the Lessor's estate in the Property, lawfully at its option, may enter into and upon said demised Property and every part thereof, and repossess the same of Lessor's former estate, and expel said Lessee and those claiming by and through or under Lessee, and remove Lessee's effects at Lessee's expense, forcibly if necessary, and store the same, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be used for arrears of rent or preceding breach of covenant. If Lessor terminates the Lease, Lessor will be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of this Lease, and in addition to any other damages recoverable by Lessor, the reasonable costs of reentry and reletting including, without limitation, the cost of any clean-up, **refurbishing, removal of Lessee's** property and fixtures, and/or any other expense occasioned by **Lessee's** failure to quit the Property upon termination and to leave the Property in the required condition, including, without limitation, any remodeling costs, attorney fees, court costs, broker commissions, and advertising costs.
- C. The foregoing remedies shall be in addition to, and shall not exclude, any other remedy available to Lessor under applicable law.

21. PERSONAL PROPERTY.

- A. All personal property placed upon the leased Property during the term of this Lease by Lessee shall remain the property of Lessee except as otherwise provided herein.
- B. Upon abandonment, expiration, termination, revocation, or cancellation of this Lease, Lessee shall remove from the Property all personal property of Lessee on or prior to the date of such termination. If Lessee fails to remove

all or part of such personal property on the expiration or termination of this Lease then all such personal property shall become the property of Lessor.

22. TERMINATION AND SURRENDER. Upon abandonment, termination, revocation or cancellation of this Lease, the Lessee shall surrender the Property to Lessor in the same condition as the Property was on the date of possession, except, that nothing in this Lease shall be construed as to relieve Lessee of Lessee's affirmative obligation to surrender said Property in a condition which complies with all Legal Requirements. Upon Lessor's written approval, Lessee may leave site improvements authorized by any land use permit. Lessee's obligation to observe and perform this covenant shall survive the expiration or the termination of the Lease.

23. NOTICES. Any notice by Lessee to Lessor or Lessor to Lessee must be served by certified or registered mail, postage prepaid, addressed to the other at the address given below or at such other address as either may designate by written notice. Notice shall be deemed effective three (3) calendar days following posting at a U.S. Post Office as herein described.

LESSOR:
Deschutes County
Attn: County Administrator
1300 NW Wall Street, Ste 200
Bend, Oregon 97701
Fax: 541-388-4752

LESSEE:
Quicksilver Contracting Company
John Williams
64682 Cook Ave, #99
Bend, OR 97701
541-419-9446

With a copy to:
City of La Pine
Attn: City Manager
PO Box 2460
La Pine, OR 97739
Fax: 541-536-1462

24. NONWAIVER. Waiver by either party of strict performance of any provision of this 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.
25. PARTNERSHIP. Lessor is not by virtue of this Lease a partner or joint venture with Lessee in connection with activities carried on under this Lease, and shall have no obligation with respect to Lessee's debts or any other liabilities of each and every nature.
26. LESSEE NOT AN AGENT OF LESSOR. It is agreed by and between the parties that Lessee is not carrying out a function on behalf of the Lessor, and that Lessor does not have the right of direction or control of Lessee's operation under this Lease or to exercise any control over the activities of Lessee.
27. LAND USE PERMIT. This Lease does not constitute a land use permit, nor does acceptance of this Lease by Lessor constitute approval of any legislative or quasi-judicial action required as a condition precedent to use of the land for the

intended purpose. Lessee's possession of the Property pursuant to Section 2 for the use described in Section 6 of this Lease and obligations under this Lease are contingent upon the approval of any necessary land use permits. If Lessee is unable or unwilling to meet conditions of land use permits, Lessee has the right to terminate this Lease, with thirty (30) days written notice to Lessor.

28. LESSOR'S RIGHT TO CURE DEFAULTS. If Lessee fails to perform any obligations under this Lease, Lessor shall have the option, but not the obligation, to do so after thirty (30) days' written notice to the Lessee. All of Lessor's expenditures to correct the default shall be reimbursed by Lessee on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. In the event that Lessee, upon using Lessee's best efforts, is unable to obtain all required land use permits, Lessee may terminate this Lease upon written notice to Lessor. Lessee shall remain liable to Lessor following termination for all unpaid lease payments, charges and damages due prior to termination and any damages, expenses, costs or losses suffered by Lessor due to Lessee's termination of this Lease.
29. LITIGATION FEES AND EXPENSES. If any arbitration or litigation is instituted to interpret, enforce, or rescind this Lease, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
30. TIME IS OF THE ESSENCE. Time is of the essence of each and every provision of this Lease.
31. SEVERABILITY. The Parties agree that if any term or provision of this Lease is declared by a court of competent jurisdiction to be void, invalid or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Lease did not contain the particular term or provision held to be void, invalid or unenforceable.
32. AUTHORITY. Lessee covenants that it possesses the legal authority to bind its principals to the terms, provisions and obligations contained within this Lease. If it is determined that Lessor does not have authority to enter into this Lease, Lessor may terminate this Lease by providing written notice to Lessee.
33. GOVERNING LAW AND VENUE. This Lease shall be governed by and interpreted in accordance with the laws of the State of Oregon. If any dispute arises regarding this Lease, the parties agree that the sole and exclusive venue for resolution of such dispute will be in Deschutes County, Oregon. All parties submit to the jurisdiction of courts located in Deschutes County, Oregon for any such disputes.

34. **ENTIRE AGREEMENT.** This Lease and attached Exhibits, if any, constitute the entire agreement between the Parties concerning the subject matter of the Lease and supersede any and all prior or contemporaneous negotiations and/or agreements between the Parties, whether written or oral, concerning the subject matter of this Lease which are not fully expressed herein. This Lease may not be modified or amended except by a writing signed by all Parties to this Lease.
35. **LESSOR DEFAULT.** No act or omission of Lessor will be considered a default under this Lease until Lessor has received thirty (30) days' prior written notice from Lessee specifying the nature of the default with reasonable particularity. Commencing from Lessor's receipt of such default notice, Lessor will have thirty (30) days to cure or remedy the default before Lessor will be deemed in default of this Lease; provided, however, that if the default is of such a nature that it cannot be completely remedied or cured within the twenty-day cure period, there will not be a default by Lessor under this Lease if Lessor begins correction of the default within the thirty-day cure period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practical.
36. **INTERPRETATION.** All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Lease.
37. **SURVIVAL.** All provisions of this Lease that would reasonably be expected to survive the expiration or termination of this Lease will do so, including, without limitation, the indemnification provisions provided under Section 11 and Section 12.

[Signature pages follow]

LESSEE:

DATED this ____ day of _____ 2016 QUICKSILVER CONTRACTING COMPANY

JOHN WILLIAMS, President

STATE OF OREGON)
) ss.
County of Deschutes)

Before me, a Notary Public, personally appeared JOHN WILLIAMS, the above-named President of Quicksilver Contracting Company and acknowledged the foregoing instrument on behalf of Quicksilver Contracting Company.

DATED this ____ day of _____ 2016

Notary Public for Oregon My Commission Expires: _____

In accordance with that certain Intergovernmental Agreement between City and County dated October 29, 2014, City hereby acknowledges receipt and acceptance of the Lease.

RICHARD ALLEN, Interim City Manager

Before me, a Notary Public, personally appeared RICHARD ALLEN, the above-named Interim City Manager of La Pine, Oregon and acknowledged the foregoing instrument on behalf of La Pine, Oregon.

Notary Public for Oregon

EXHIBIT A

EXHIBIT "A"

An area of land lying in the Southwest 1/4 of Section 13 and the Southeast 1/4 of Section 14, Township 22 South, Range 10 East, Willamette Meridian, Deschutes County, Oregon, described as follows:

COMMENCING at the southwest corner of Lot 1, La Pine Industrial Site, Deschutes County, Oregon (County Survey 7947);

Thence North 79°35'19" West, 100.18 feet to the east right of way line of the Burlington Northern – Santa Fe Railroad;

Thence South 10°24'41" West, 2002.62 feet along said east right of way line to a point;

Thence North 89°49'58" East, 101.89 feet to the southeast corner of Lot 12, La Pine Industrial Site Phase II, Deschutes County, Oregon (County Survey 7950);

Thence North 10°24'03" East, along the west line of said Lot 12, 1984.51 feet to the POINT OF COMMENCEMENT.

Contains 4.57 Acres or 199,069 square feet, more or less.

Bearings are based upon County Survey 16654, Deschutes County Surveyor's Records.

The attached map is a part of this description and shall be attached hereto.

