



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 2016-066, a Lease and Purchase Option 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 and Purchase Option is with Quicksilver Contracting Company for the use of approximately 3.38 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 needs. The term of the Lease/Purchase Option is from February 1, 2016 through January 31, 2019 (a period of 3 years). As conditions of the sale, the Option Agreement requires the purchaser to sign a repurchase agreement allowing to County to repurchase the property if the purchaser fails to invest a total of one million dollars thorough separate investments of \$500,000 each for initial development of the property and subsequent purchase of equipment and facilities to be used in conjunction with the business within 24 months of closing of the sale.

FISCAL IMPLICATIONS:

Annual rental income is \$6,900 (\$575/month), with this amount being split equally between Deschutes County and the City of La Pine per the IGA (\$3,450 annually to County and City).

The proposed purchase price is \$132,619.50 (\$0.90 per square foot), with this amount being split equally between Deschutes County and the City of La Pine per the IGA (\$66,309.75 to County and City upon closing of the sale).

RECOMMENDATION & ACTION REQUESTED:

Staff recommends signature of Document 2016-066.

ATTENDANCE: James Lewis

DISTRIBUTION OF DOCUMENTS:

One fully signed original to James Lewis for the 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 and Purchase Option

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, 2019

Annual Value or Total Payment: \$575/month base rent – (\$287.50 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 **2016-066**

INDUSTRIAL LEASE AND OPTION TO PURCHASE

THIS INDUSTRIAL LEASE AND OPTION TO PURCHASE ("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 owns that certain property legally described as Lot 2, La Pine Industrial Site Phase II, Deschutes County, Oregon (County Survey 7950) (the "Site").
- B. The Site is located within the La Pine Industrial Park.
- C. Lessor is a party to an Intergovernmental Agreement with the City of La Pine ("City") dated October 29, 2014 (the "Agreement").
- D. 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.
- E. City marketed the Site to Lessee and recommended Lessor lease a portion of the Site to Lessee.
- F. Subject to the terms and conditions of this Lease, the Parties now desire to enter into an agreement to lease approximately 3.38 acres (147,355 sq. ft.), more or less, of the Site described and depicted on the attached Exhibit A, incorporated herein by this reference (the "Property").
- G. Subject to the terms and conditions of this Lease, the Parties also desire to establish an option for Lessee to purchase the Property.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

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, 2019 a period of three (3) 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 for an additional two (2) years (the "Renewal Term") by notifying Lessor in writing sixty (60) days prior to the end of the current 36-month term. Rent for the Renewal Term shall be equal to an increase of 3.0% over the rent rate of final year of the original term. 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 Five Hundred Seventy-Five Dollars (\$575.00) commencing with the date specified in Section 1. Rent may be prorated for the first partial month. 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. Rent for each successive year of the original term and each renewal term shall increase by 3.0% over the rent rate of the immediately preceding year.

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 and timber, wood products, buildings and equipment associated with logging and timber operations and other associated business needs ("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 and any and all permits required to construct improvements on the property.

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 and/or the Option (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 (the "Business Property") 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. OPTION TO PURCHASE.

A. Grant of Option. During the Option Term (as defined below), provided that Lessee is not then in default under this Lease (as defined in Section 19), Lessee shall have the sole and exclusive option to purchase the Property as provided below (the "Option"). On the terms and conditions provided in this Lease, Lessor grants this Option to Lessee for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged.

B. Term. The term of the Option (the "Option Term") shall commence on the Effective Date and shall automatically expire on January 31, 2019 or upon the expiration or termination of the lease, whichever occurs first.

C. Exercise of Option. Subject to the requirements contained in Section 28(D) below, at any time during the Option Term, this Option shall be exercised, if at all, by written notice (the "Exercise Notice") given by Lessee to Lessor, which notice shall state that Lessee has elected to exercise this option. The Exercise Notice shall be accompanied by a signed purchase and sale agreement (in a form reasonably acceptable to Lessor). This Option may be exercised only with respect to the entirety of the Property, as reflected by the Partition (described in Section 28(D) below), and nothing contained herein shall be construed as permitting Lessee to purchase less than all of the Property pursuant to this Option. Upon exercise of this Option, Lessee shall be obligated to purchase the Property from Lessor, and Lessor shall be obligated to sell the Property to Lessee, for the price and in the manner herein set forth.

D. Condition Precedent to Lessee Exercising Option. Prior to exercising the Option granted herein, Lessee will have established the Property as a lawful and discrete unit of land by: (a) obtaining all approvals necessary to partition the Site as shown on the map in Exhibit A (the "Partition") and (b) recording the plat of the Partition (the "Plat") following expiration of all applicable appeal rights. Following recording of the Plat, the description attached as Exhibit A will be replaced and superseded on the Effective Date by a revised legal description resulting from the Partition (the "Partition Legal Description"). Lessee will attach the Partition Legal Description to the purchase and sale agreement described in Section 28(C) above. Any attempt by Lessee to exercise the Option or to deliver an Exercise Notice prior to satisfying the conditions precedent set forth in this Section 28(D) shall be null and void. City will reimburse Lessee one-half (50%) of all costs of the Partition including, without limitation, all application fees, surveyor fees, attorney fees, and recording fees related to the Partition up to \$2,500.00.

E. Release. Lessee may release its interest in this Option at any time during the Option Term by executing a written instrument assigning its option to purchase the Property to Lessor.

F. Failure to Exercise Option. If Lessee fails for any reason to exercise this Option within the Option Term, the Option shall be null and void and Lessee shall have no further rights or options to acquire the Property.

G. Termination of Lease. If this Lease is terminated by either party, the Option shall also be terminated.

H. Purchase Price; Sale Terms. The purchase price for the Property (the "Purchase Price") shall be ONE HUNDRED THIRTY TWO THOUSAND SIX HUNDRED NINETEEN DOLLARS AND FIFTY CENTS (\$132,619.50) (\$0.90/sq. ft.). The Purchase Price for the Property shall be paid in cash to Lessor. Except for the Purchase Price, the Parties shall mutually agree on the terms and conditions of the purchase and sale of the Property at the time Lessee exercises the Option. If Closing occurs, the conveyance of the Property will be via a bargain and sale deed ("Deed"). The Deed will be in a form to be approved by Lessor and City and will include certain restrictions as provided under Section 28(L) of this Lease. Lessee will attach to the Deed the Property's legal description reflecting the revised legal description for the Property following the Partition. At Closing, Lessee will be required to enter into an option to repurchase by Lessor (the "Repurchase Option") that contains certain restrictions as provided under Section 28(L) of this Lease. The Repurchase Option will be in a recordable form to be approved by Lessor and City.

I. Conditions Precedent to Closing. As conditions precedent to the Closing (as defined below) of the Property the following must have occurred: (a) Lessee shall have secured sufficient financing to complete the Purchase Price, and (b) terms and conditions of purchase of the Property and the form of the Deed with the applicable Deed restrictions must be approved by the City.

J. Closing. Notwithstanding anything in this Lease to the contrary, Lessor shall transfer the Property to Lessee free of any liens or monetary encumbrances. The purchase and sale agreement shall provide that Lessee agrees to acquire the Property in an AS-IS condition without any representations or warranties by Lessor and/or Lessor's Agents and/or City and/or City's Agents. Closing of the sale to Lessee shall occur no later than sixty (60) days from the date Lessee provides the Exercise Notice to Lessor unless an extension is approved by Lessor. The purchase and sale agreement shall be accompanied by a non-refundable earnest money deposit to Lessor in the amount of FIVE THOUSAND DOLLARS (\$5,000). All Costs of the closing and transfer will be paid by Lessee. "Costs" include, without limitation, all recording costs, filing fees, costs of appraisals, title insurance, and inspection. Closing of the transaction will occur at a title company mutually agreed upon by the parties (the "Title Company"). This Lease will terminate upon closing of the sale.

K. Duty to Construct/Occupy. Within twenty-four (24) months after Closing of the Property, Lessee will at Lessee's cost: (a) acquire all necessary permits for and commence construction of an office, workshop, and/or repair facility for Lessee's business on the Property or on the Business Property the cost of which will be no less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) (the "Initial Improvements"); and (b) spend no less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) on additional improvements, equipment, and/or facilities to be used in conjunction with Lessee's forest products business located on the Business Property (the "Additional Improvements"). Lessee's combined financial obligations under (a) and (b), above, will be no less than ONE MILLION DOLLARS (\$1,000,000.00). After commencement of construction of any structure or improvement, Lessee will diligently prosecute to completion. To that end, no structure will remain in a partially finished condition any longer than reasonably necessary for completion thereof. The construction will be performed in a workmanlike manner and will comply with all applicable governmental permits, laws, ordinances and regulations, including, without limitation, any applicable Legal Requirements. "Closing" means the recording of the Deed.

L. Failure to Construct/Occupy. Lessee acknowledges that a substantial part of the consideration of Lessor entering into this Lease, the option to purchase, and any future purchase and sale agreement resulting from Lessee exercising the option to purchase contained in this Lease, is construction of an office, workshop, and/or repair facility, and other improvements, equipment, or facilities as described in Section 28(K), on the Property and/or the Business Property and the use of the Property for Lessee's forest products business. Lessor would not have entered into this Lease without the agreement by Lessee to develop and use the Property within twenty-four (24) months after Closing of the Property and that any failure by Lessee to develop the Property and to occupy and use the Property for Lessee's forest products business will result in damage to Lessor in an amount which would be very difficult to ascertain. If Lessee (a) fails, within twenty-four (24) months after Closing, to acquire all necessary permits to initiate construction of an office, workshop, and/or repair facility pursuant to Section 28(K), and/or (b) fails, within twenty-four (24) months after Closing, to spend no less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) on the Initial Improvements and no less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) on the Additional Improvements, Lessor reserves the right to repurchase the Property for the initial Purchase Price and Lessee hereby grants Lessor the option to repurchase on the terms described herein. However, in the event that construction of any improvements has commenced or been completed at the time of the buyback, the repurchase price shall be the initial Purchase Price plus the lesser of: (i) the actual costs incurred in connection with the portion of construction completed; or (ii) the fair market value of the portion of construction constructed as determined by the Lessor. Further, if during the term of the Lease Lessee fails for one hundred twenty (120) days or more to occupy and use the Property for those Permitted Uses defined in this Lease, Lessor reserves the right to repurchase

and Lessee grants Lessor an option to purchase the Property for the initial Purchase Price. Lessee's obligation to spend no less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) on Additional Improvements may be deemed satisfied by providing Lessor documentation from the Deschutes County assessor, in a form reasonably acceptable to Lessor, verifying that Lessee has spent no less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) on qualified property for the purposes of an enterprise zone exemption under ORS 285C.175. In addition, if Lessee provides Lessor documentation, in a form reasonably acceptable to Lessor, demonstrating that construction of the Initial Improvements has been completed, Lessor shall provide Lessee documentation that deems Lessee's obligation to construct the Initial Improvements under this Agreement satisfied. The rights and obligations imposed by this Section 28(L) and this right to repurchase the Property by Lessor shall survive Closing.

29. 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.

30. 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.

31. TIME IS OF THE ESSENCE. Time is of the essence of each and every provision of this Lease.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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.

38. 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]

LESSOR:

ANTHONY DEBONE, Chair

ALAN UNGER, Vice-Chair

TAMMY BANEY, Commissioner

DATED this _____ day of _____

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{14323285-00598941;9}

LESSEE:

DATED this ____ day of _____ 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 _____

My Commission Expires: _____
Notary Public for Oregon

CITY OF LA PINE:

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

DATED this ____ day of _____ CITY OF LA PINE

RICHARD ALLEN, Interim City Manager

STATE OF OREGON)
) ss.
County of Deschutes)

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.

DATED this ____ day of _____

My Commission Expires: _____ My Commission Expires: _____
Notary Public for Oregon

EXHIBIT A

EXHIBIT "A"

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

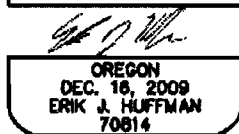
All that portion of Lot 2, La Pine Industrial Site Phase II, Deschutes County, Oregon (County Survey 7950);

EXCEPT the north 106 feet of the east 410 feet of said Lot 2;

ALSO EXCEPT the east 200 feet of said Lot 2.

Contains 3.38 Acres or 147,355 square feet, more or less.

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



RENEW: JUN. 30, 2017

