

Industrial Lease (Year To Year) 09-01-06  
(Unimproved Property)  
Form Approved, Law

Folder No. 02567-81  
Audit No. \_\_\_\_\_

**LEASE OF PROPERTY**  
**(INDUSTRIAL LEASE - UNIMPROVED - YEAR TO YEAR)**

**THIS LEASE** ("Lease") is entered into on \_\_\_\_\_, 2011, between **UNION PACIFIC RAILROAD COMPANY** ("Lessor") and the **CITY OF PORTLAND, OREGON**, an Oregon municipal corporation, whose address is c/o Property Acquisition Manager, Portland Parks & Recreation, 1120 SW 5<sup>th</sup> Avenue, Suite 1302, Portland, OR 97204-1933 ("Lessee").

**IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**Article 1.     PREMISES; USE.**

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Portland, Oregon, shown on the print dated January 1, 2010, marked **Exhibit A**, hereto attached and made a part hereof, subject to the provisions of this Lease and of **Exhibit B** attached hereto and made a part hereof. The Premises may be used for golf course, parking, beautification, and purposes incidental thereto, only, and for no other purpose.

**Article 2.     TERM.**

The term of this Lease shall commence on the date first written above, and, unless sooner terminated as provided in this Lease, shall extend for one year and thereafter shall automatically be extended from year to year.

**Article 3.     RENT.**

In consideration of the covenants described herein, Lessor waives payment of any rent by Lessee.

**Article 4.     INSURANCE.**

A. Lessor acknowledges that Lessee is self-insured and will not obtain a separate insurance policy for this Lease. If Lessee becomes no longer self-insured, then Lessee shall obtain commercial general liability (CGL) insurance, including automobile liability, that protects Lessor and Lessee from damage to property or personal injury, including death, arising from Lessee's activities or any condition of the Premises, whether or not related to an occurrence caused or contributed to by Lessor's negligence. The CGL insurance shall: protect Lessee against the claims of Lessor on account of the obligations assumed by Lessee under this Lease and shall protect Lessor and Lessee against claims of third persons; be for not less than \$1,000,000 per each occurrence; and, be without prejudice to coverage otherwise existing and shall name as additional insureds Lessor and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the CGL insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The CGL insurance coverage shall apply as to claims between insured on the policy and shall include a

provision for thirty (30) days written notice for cancellation to be given to the insured and additional insureds. Lessee agrees to maintain continuous, uninterrupted insurance coverage for the duration of the Lease.

B. All insurance correspondence, certificates and endorsements shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 02567-81.

Article 5. SPECIAL PROVISIONS.

A. Fence.

i. The parties recognize that the Tri-County Metropolitan Transportation District of Oregon ("TriMet") intends to construct its Portland-Milwaukie light rail project in the vicinity of the Premises commencing in 2012. Prior to TriMet's commencement of such construction, and provided that Lessee has not been notified that Lessor intends to begin work to shift its mainline tracks to the east as contemplated in Section 12(a) of **Exhibit B**, Lessee, at its expense, shall construct barriers and fencing as shown in **Exhibit C-1**.

ii. Through a separate agreement between Lessor and TriMet, upon notice by Lessor that it intends to begin work to shift its mainline tracks to the east, TriMet, at its expense and in cooperation with Lessee, will construct barriers and fencing on the Union Pacific property line as shown in **Exhibit C-2**.

iii. Through a separate agreement between Lessor and TriMet, upon notice by Lessor that it intends to begin work to add another track on the east side of the existing and/or relocated tracks, TriMet, at its expense and in cooperation with Lessee, will construct a permanent fence on the Union Pacific property line from Reedway to Tacoma as shown in **Exhibit C-3**.

B. Existing Improvements. Lessor approves Lessee's continued use and maintenance of existing improvements on the Premises, including but not limited to vegetation, paths, roads, and the parking lot.

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

Lessor:  
UNION PACIFIC RAILROAD COMPANY

Lessee:  
CITY OF PORTLAND, OREGON

By:   
Director - Real Estate  
*Special Properties*

By: \_\_\_\_\_  
Director, Portland Parks & Recreation

APPROVED AS TO FORM

  
CITY ATTORNEY

**EXHIBIT B  
TO  
INDUSTRIAL LEASE (UNIMPROVED YEAR TO YEAR)**

**Section 1. IMPROVEMENTS.**

No improvements placed upon the Premises by Lessee shall become a part of the realty.

**Section 2. RESERVATIONS, TITLE AND PRIOR RIGHTS.**

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves the right to construct, maintain, and operate new and existing facilities (including trackage, communication facilities, roadways, and utilities) upon, over, across, or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

D. Without limitation of Subparagraphs B. and C. above, Lessee shall not interfere in any manner with the use or operation of any signboards now or hereafter placed on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards). In no event may Lessee construct on the Premises any improvements that interfere in any manner with the visibility or operation of any signboards now or hereafter on the Premises or on property in proximity to the Premises.

**Section 3. TAXES AND ASSESSMENTS.**

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements related to Lessee's use of the Premises, Lessee shall pay Lessor 12% of the full assessment amount annually.

**Section 4. WATER RIGHTS.**

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

**Section 5. CARE AND USE OF PREMISES.**

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises free and clear from any substance which might create a hazard.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises other than the Lessor Improvements is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

**Section 6. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.**

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee or Lessor (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor.

D. Without limitation of the provisions of Section 11 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties to the extent they are incurred on account of Lessee's Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises,

regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 11), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except to the extent the Hazardous Substance or the contamination is exacerbated by any excavation by the Lessee.

E. Should any discharge, spillage or pollution of any type occur upon or from the Premises due to Lessee's use and occupancy thereof, Lessee, at Lessee's expense, shall clean all property affected thereby to the satisfaction of any governmental body having jurisdiction thereover.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

#### Section 7. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

#### Section 8. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

#### Section 9. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

**Section 10. AS-IS.**

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

**Section 11. RELEASE AND INDEMNITY.**

A. As a material part of the consideration for this Lease, Lessee, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises; or (ii) arising from or related to any use of the Premises by Lessee or any licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or, or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall not apply to any loss caused by any gross negligence, misconduct, or criminal activity of any Indemnified Party.

C. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 11.

**Section 12. TERMINATION.**

A. Lessee acknowledges that Lessor contemplates making changes to its facilities in the near future that would require modification of the boundaries of the Premises or termination of all or a portion of this Lease. These changes would include: (i) shifting Lessor's mainline tracks to the east and/or (ii) adding another track on the east side of the existing and/or relocated tracks. If Lessor wishes to pursue such plans, it will provide notice to Lessee as follows:

1. Bybee Boulevard and North. Lessor may recover all of that part of the Premises beneath and north of the Bybee Boulevard overcrossing upon notice to Lessee that Lessor intends to begin work to shift its tracks to the east. Lessor

must provide at least ninety (90) days written notice before it begins its work or builds or relocates the fence described in Article 5(A) of the Lease. Upon expiration of the notice period, Lessee will have an additional ninety (90) days during which it may occupy the Premises concurrently with Lessor for purposes of removing or relocating its facilities. By the end of this second ninety (90) day period, Lessee must have vacated and surrendered that part of the Premises beneath and north of Bybee Boulevard.

2. South of Bybee Boulevard. Lessor may recover all of that part of the Premises south of the Bybee Boulevard overcrossing upon notice to Lessee that Lessor intends to begin work to build an additional track to the east of the existing tracks. Lessor must provide at least ninety (90) days written notice before it begins its work or builds or relocates the fence described in Article 5(A) of the Lease. Upon expiration of the notice period, Lessee will have an additional ninety (90) days during which it may occupy the Premises concurrently with Lessor for purposes of removing or relocating its facilities. By the end of this second ninety (90) day period, Lessee must have vacated and surrendered that part of the Premises south of Bybee Boulevard.

B. If Lessor does not provide notice of the projects described in Section 12(A) within one year after the effective date of the Lease, the parties will meet in good faith to discuss the status of Lessor's plans and possible amendments to the provisions of the Lease related to termination.

C. Notwithstanding any other provision of this Lease, either party may terminate the Lease with or without cause upon one year written notice to the other party.

### **Section 13. LESSOR'S REMEDIES.**

Lessor's remedies for Lessee's default are to (a) terminate this Lease as provided in Section 13 above and sue Lessee for damages, and/or (b) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, and may prohibit further access by Lessee, all without being liable for damages.

### **Section 14. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.**

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all debris, rubbish, structures, trees, vegetation, and other materials, including all personal property, and have restored the surface to a condition that meets Lessor's reasonable satisfaction.

B. If Lessee has not completed such removal prior to termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, or (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee.

**Section 15. FIBER OPTICS.**

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. Lessor may change the telephone number and hours of operation by giving Lessee notice of the change. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 15, the release and indemnity provisions of Section 11 above shall apply fully to any damage or destruction of any telecommunications system.

**Section 16. NOTICES.**

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by facsimile, by email or by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to the parties as follows:

To Lessor:        UNION PACIFIC RAILROAD COMPANY  
                      ATTN: Assistant Vice President - Real Estate  
                      Real Estate Department  
                      1400 Douglas, Stop 1690  
                      Omaha, NE 68179  
                      Facsimile: (402)501-0340

To Lessee:        CITY OF PORTLAND  
                      Property Manager  
                      Bureau of Parks & Recreation  
                      1120 SW Fifth Avenue, Room 1302  
                      Portland, Oregon 97204  
                      Facsimile (503) 823-5229

Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are faxed, emailed, are personally served or sent by courier service shall be deemed served upon receipt.

**Section 17. ASSIGNMENT.**

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**Section 18. CONDEMNATION.**

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

**Section 19. RIGHTS AND OBLIGATIONS OF LESSOR.**

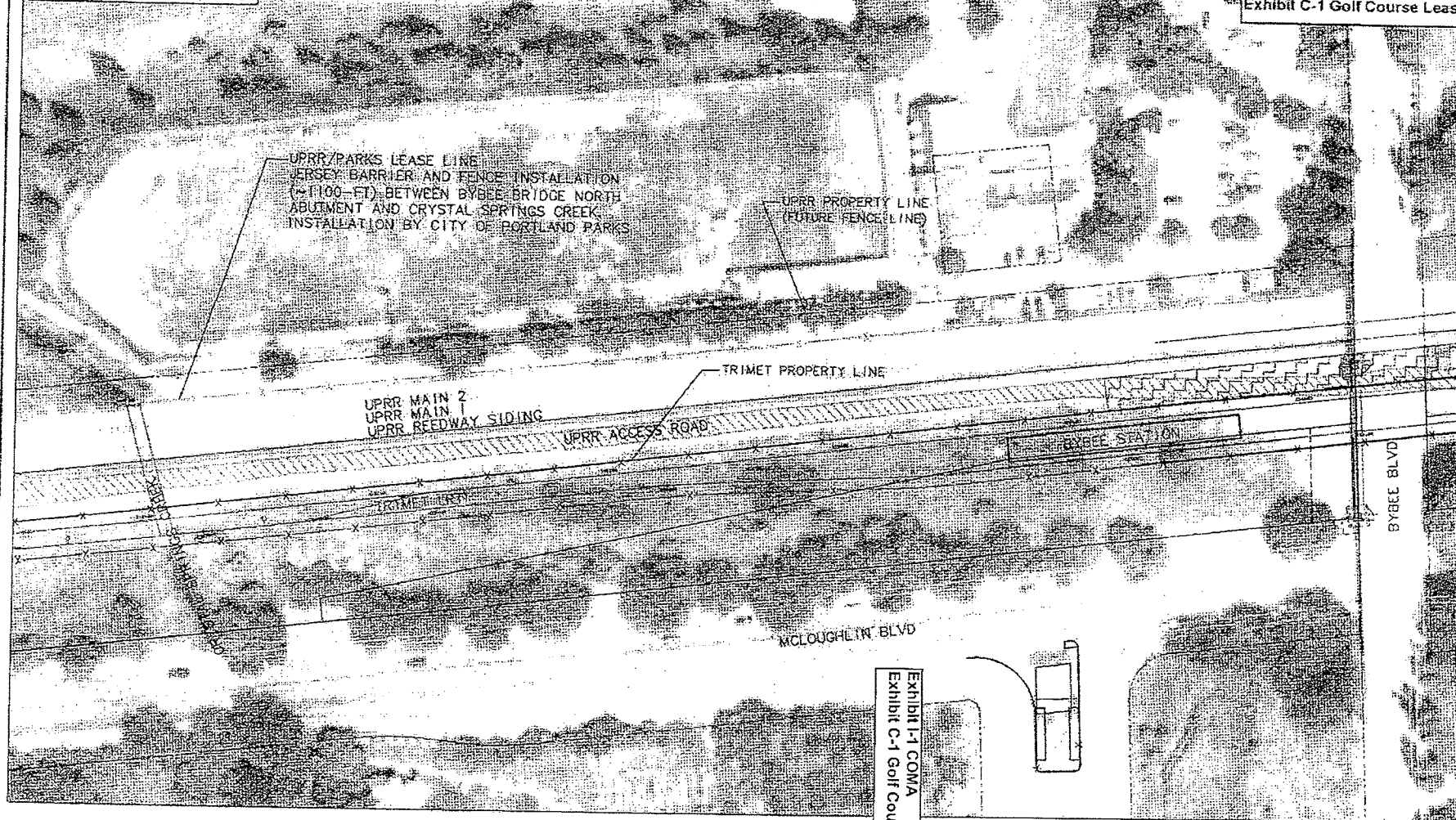
If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

**Section 20. ENTIRE AGREEMENT.**

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including, without limitation, Lease Audit No. N/A and any other lease under which all or any portion of the Premises was leased to Lessee. Notwithstanding the prior sentence, Lessee shall retain any and all obligations and liabilities which may have accrued under any other such agreements prior to the commencement of the term of this Lease. This Lease may be amended only by a written instrument signed by Lessor and Lessee. The Director of the Bureau of Parks and Recreation is authorized to execute amendments to this Lease.

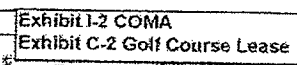
PHASE I FENCE AND BARRIER

Exhibit I-1 COMA  
Exhibit C-1 Golf Course Lease



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NO.	DATE	BY	REVISION																												
EXHIBIT I-1 COMA EXHIBIT C-1 GOLF COURSE LEASE				TRIMET		DATE: 8/27/11 DRAWN BY: [Signature] CHECKED BY: [Signature] APPROVED BY: [Signature]																									

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