

# Council Business Meeting

March 16, 2021

|                    |   |                       |
|--------------------|---|-----------------------|
| <b>Agenda Item</b> | Ashland Gun Club Lease Extension  |                       |
| <b>From</b>        | Scott Fleury PE   | Public Works Director |
| <b>Contact</b>     | <a href="mailto:Scott.fleury@ashland.or.us">Scott.fleury@ashland.or.us</a> ; (541)-552-2412 |                       |

## **SUMMARY**

Before the Council is a required review and request to approve a lease extension between the City of Ashland and the Ashland Gun Club for the property located at 555 Emigrant Creek Road. The existing lease is attached (#1) for reference. The lease approved in 2011 provided for an initial fifteen-year term and authorizes an extension through fiscal year (FY) 2032 upon timely Gun Club request 90 days before the end of FY 2021, as long as Council does not reject that request within 45 days of receiving it with renewal options. On February 8, 2021, the City received from the Gun Club a written request for extension of the termination date of the lease.

## **POLICIES, PLANS & GOALS SUPPORTED**

N/A

## **PREVIOUS COUNCIL ACTION**

The Council has taken significant actions over time with respect to the Ashland Gun Club lease including formal approval of lease documents and approval of contractual work associated environmental analysis and wetland mitigation efforts on the site.

## **BACKGROUND AND ADDITIONAL INFORMATION**

The Ashland Gun Club has been leasing approximately 32 acres of the 65 acres the City owns in the Emigrant Creek area to use as a gun club facility since at least 1968. The Gun Club provides pistol, rifle, shotgun and bow and arrow facilities for public use.

The current lease with the Ashland Gun Club was approved at the July 19, 2011 Business Meeting ([Minutes](#)). The original term of the lease was defined for a period of fifteen years. that may be extended after the expiration of the first ten years as provided in Section 2.3. "Extension Options". The extension of the lease requires the Ashland Gun Club to submit a formal request to extend the lease ninety days prior to June 30 starting in 2021. This formal extension request is required each year starting in 2021 and thru 2025, see table below.

| <b>Deadline to Renew Lease by Letter</b> | <b>Beginning of Lease Term if Accepted by the Lessor</b> | <b>End of Lease Term</b> |
|--|--|--------------------------|
| Tuesday, March 30, 2021                  | Thursday, July 01, 2021                                  | Sunday, June 30, 2032    |
| Wednesday, March 30, 2022                | Friday, July 01, 2022                                    | Thursday, June 30, 2033  |
| Thursday, March 30, 2023                 | Saturday, July 01, 2023                                  | Friday, June 30, 2034    |
| Saturday, March 30, 2024                 | Monday, July 01, 2024                                    | Saturday, June 30, 2035  |
| Sunday, March 30, 2025                   | Tuesday, July 01, 2025                                   | Monday, June 30, 2036    |

Rent Terms may be reviewed (2021, 2024)

The City received on February 8, 2021 the Gun Club's formal request to renew the lease (Attachment #2). This has triggered the start of a 45-day period within which the City has the option to reject the request. The City's decision to make no response to the request prior to March 26 would mean renewal of the lease until June 20, 2032

**Council Options:**

1. **No action by Council (or express approval) at this time.** This mean the Gun Clubs request for renewal would take effect, resulting in a new termination date of June 30, 2032 instead of June 30, 2026; and if the Gun Club makes similar extension requests in 2022, 2023, 2024, and 2025, then non-action by Council on those requests (or express approval of them) would result in revised termination dates on June 30 of 2033, 2034, 2035, and 2036, respectively.
2. **Rejection by Council of Gun Clubs extensions request.** This mean the lease would terminate June 30, 2026, or a new termination date in the current lease could be agreed upon between now and June 30, 2026, or a new lease could be agreed upon between now and June 30, 2026.

**FISCAL IMPACTS**

The only fiscal impact associated with approval of the lease extension is the staff time utilized to bring forth the action before Council.

**STAFF RECOMMENDATION**

Staff recommends approval of the lease extension with no modification to the Rent and other Considerations Section 3.

**ACTIONS, OPTIONS & POTENTIAL MOTIONS**

I move to approve the lease extension for the Ashland Gun Club.

**REFERENCES & ATTACHMENTS**

Attachment 1: Ashland Gun Club Lease

Attachment 2: Ashland Gun Club Lease Extension Request

Attachment 3: Ashland Police Department Memo

## ASHLAND GUN CLUB LEASE AGREEMENT

**THIS AGREEMENT** is entered into between the CITY OF ASHLAND, OREGON, by and through the City Council, hereinafter referred to as **Lessor**, and the ASHLAND GUN CLUB, INC., hereinafter referred to as **Lessee**.

**Whereas**, Lessor is the owner of certain real property located in Jackson County, Oregon; and

**Whereas**, the Lessor has formally leased the Property to Lessee since 1968 so that the Lessee could use the property as a shooting range and Ashland Gun Club facility; and

**Whereas**, the current lease has been in effect since 1994 and it expired on May 30, 2009;

**Whereas**, the Lessee has been allowed to continue leasing the property on a month-to-month basis until May 30, 2011, to allow for lease negotiations and completion of environmental testing; and

**Whereas**, the Lessee would like to be eligible for grants from the State of Oregon and Federal agencies that provide funds for Hunter/Shooter Safety training, range improvements, lead abatement and other programs; and

**Whereas**, many grant programs require applicants to have remaining lease periods of ten years or more; and

**Whereas**, the Lessor wishes to enter into a new lease that will further the public interest by meeting grant requirements, requiring lead remediation, and establishing conditions and restrictions on the use of the Property that will address the concerns of abutting property owners and the City.

**NOW THEREFORE, LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:**

### **1. DEFINITIONS.**

The following definitions shall apply to this document:

- (1) **Agreement**: this document, entitled Ashland Gun Club Lease Agreement, and any exhibits incorporated herein.
- (2) **Alterations**: include the addition or removal of any buildings, sheds, structures, or the installation of any utilities, pipes, wiring, cables, and conduit on the Property.
- (3) **Automatic Weapons**: a firearm that reloads itself and continues to fire until the trigger is released.
- (4) **Bodily Injury**: any damage to a person's physical condition including pain or illness, including but not limited to, an injury resulting in death.
- (5) **Effective Date**: July 1, 2010, the date this Agreement will take effect.
- (6) **Emergency**: any human caused or natural event or circumstances causing or threatening loss of life, injury to person or property, human suffering or financial loss that is declared an emergency pursuant to AMC 2.62, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, spills or releases of oil or hazardous material, contamination, disease, blight, infestation, civil disturbance or riot.

- (7) Environmental Law: any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.
- (8) Hazardous Waste: any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by the Resource Conservation and Recovery Act or any other Environmental Law and shall include, without limitation, petroleum oil and its fractions.
- (9) Lead: A component of bullets, shot, and other firearm projectiles that is used for its' intended purpose on a shooting range.
- (10) Lessee: Ashland Gun Club, Inc.
- (11) Lessor: the City of Ashland.
- (12) Premises: the Property described on Exhibit A (*except for* remnants, structures and areas with historic significance, including, Pompadour Springs, all pipes, facilities and sources for obtaining Lithia water and all features marked on Exhibit C) and any alterations or improvements constructed by Lessee.
- (13) Property: certain real property located in Jackson County, Oregon, and described fully in Exhibit A, attached hereto and incorporated herein by this reference.
- (14) Remediation: A means of reducing the quantity of Lead on the Premises by using reclamation to collect Lead from the ground that is distributed on the property or imposing other technologies, techniques or strategies to reduce Lead on the Premises. Remediation shall occur while the lease is in effect and does not require the complete removal of Lead from the Premises.
- (15) Resource Conservation and Recovery Act: The Solid waste Disposal Act promotes the protection of health, the environment and the conservation of valuable material and energy resources by providing for the promulgation of regulations for solid waste collection, transport, separation, recovery, and disposal.
- (16) Sunset: the setting or descent of the sun below the horizon in the evening as determined by the Astronomical Applications Department of the United States Naval Observatory.

## **2. LEASE OF PROPERTY AND TERM OF LEASE.**

**2.1. Agreement to Lease.** In consideration of the rent to be paid and covenants to be performed by Lessee under this Agreement, Lessor hereby agrees to lease the Property to Lessee, and Lessee agrees to lease the Property from Lessor on the terms and conditions set forth in this Agreement.

**2.2. Original Term.** The term of this lease shall be for a period of fifteen years, commencing on the Effective Date and the lease may be extended after expiration of the first 10 years in accordance with Section 2.3, unless terminated earlier as provided in this Agreement.

**2.3. Extension Option.** If the Agreement is not in default after the first ten years of the lease term has elapsed, the lease shall operate as follows:

- (1) Method of Extension; Lease Term. After the initial ten years of the lease has elapsed on June 30, 2021, the lease must be extended each year for the remainder of the lease term by giving written notice to Lessor at least ninety (90) days before June 30th starting in the year 2021.

Each of the extension terms shall commence on July 1st (the day following expiration of the preceding year) and shall continue for ten years. (See Table below). Giving such

notice shall be sufficient to make the Agreement binding for a renewal term of ten years unless the Lessor objects to the renewal request.

- (2) Rejection of Extension Request. The Lessor may reject Lessee’s request to extend and renew the lease by providing written notice to the Lessee that the extension request will not be accepted within forty-five (45) days of receipt of the extension request from the Lessee. Failure to respond within 45 days of receipt of the extension request indicates that the Lessor accepts the renewal of the lease.
- (3) Adjustment of Rent Provision. The Lessor shall have the opportunity to adjust the rent established by this Agreement in section 3 once every three (3) years, starting in 2021. (See Table Below.) All other terms of this Agreement shall remain the same.

| Deadline to Renew Lease by Letter | Beginning of Lease term if Accepted by the Lessor | End of Lease Term |
|-----------------------------------|---|-------------------|
| March 30, 2021*                   | July 1, 2021                                      | June 30, 2032     |
| March 30, 2022                    | July 1, 2022                                      | June 30, 2033     |
| March 30, 2023                    | July 1, 2023                                      | June 30, 2034     |
| March 30, 2024*                   | July 1, 2024                                      | June 30, 2035     |
| March 30, 2025                    | July 1, 2025                                      | June 30, 2036     |

\* = years the rent terms may be reviewed.

**Section 2.4. Emergency Termination.** In the case of an Emergency the Lessor may immediately terminate the lease and take possession of the Premises. If the Lessor exercises this right, the Lessor assumes all obligations of any grants and any obligations associated with any environmental assessments and/or any management plan adopted pursuant to Section 4.6 that Lessee has incurred due to this lease. In addition, Lessee will not be required to return the Premises to its original condition if the Lessor exercises this right.

**3. RENT AND OTHER CONSIDERATION.**

**3.1. Rent.** All taxes, insurance costs, utility charges, and other costs that Lessee is required to pay by this Agreement, and any other sums that Lessee is required to pay to Lessor or third parties shall be considered rent.

**3.2. Required Community Events.**

- (1) Sighting-In Weekend. The Lessee shall provide access to its shooting ranges, during normal operating hours, free of charge for one weekend prior to the regular deer and elk hunting seasons as published in the *Oregon Big Game Regulations* by the Oregon Department of Fish and Wildlife. Lessee shall also provide Range Officers and other assistance as necessary to enforce regulations, safety and otherwise, during the weekend.
- (2) Community Open House Weekend. The Lessee shall provide access to the Premises during normal operating hours for all neighbors and community members at least one weekend per year to explain the programs and opportunities provided by the Lessee. Lessee may provide the opportunity for visitors to fire weapons on the range under strict control of the Lessee’s Range Officers.
- (3) Historic Day. Lessee shall provide access to the Property for all neighbors and community members during normal operating hours for at least one day per year in which the shooting ranges will be closed to shooting. During the event activities will be focused on the historic importance of the site.

#### 4. USE OF PREMISES.

**4.1. Permitted Use.** The Premises shall be used as a firearms training facility that provides indoor and/or outdoor facilities that allow the use of rifles, pistols, shotguns, and archery equipment. A number of facilities are already present on the facility and Lessee shall have the rights to such facilities. The Lessee shall have the right to construct such facilities as are normally associated with such use, including, but not limited to, ranges, berms, targets, target sheds, club buildings and parking lots, with the approval of Lessor and Jackson County.

#### 4.2. Restrictions on Use.

- (1) Hours of Operation. Lessee shall post the hours of operation for the shooting ranges with a phone number where a responsible party can be reached. The hours of operation for the shooting ranges shall be: Monday through Friday from 8AM to 8PM or Sunset, whichever is earlier, and Saturday and Sunday from 9AM to 8PM to Sunset, whichever is earlier.
  - (a) EXCEPTION. The Ashland Police Department, National Forensic Laboratories, National Guard, and Reserve Units may utilize the shooting ranges outside of the standard hours of operation for specialized training by having the Ashland Gun Club provide notice of specialized training sessions in its newsletter and to the Lessor in accordance with Section 13.3 at least thirty (30) days before the training session. If a training session is scheduled after the monthly newsletter is published, or so that the newsletter will not be received in time to give nearby property owners adequate notice, the Ashland Police Department, National Forensic Laboratories, National Guard, or the Reserve Units holding the training must notify nearby property owners of the event by other means at least two weeks before the event. Lessee agrees to provide contact information for nearby property owners to these agencies if requested.
- (2) Holiday Closures. The Lessee shall close the Premises completely for four holidays each calendar year. The four dates for which the Premises will be closed to all shooting activity will be listed in the first Gun Club Newsletter of each calendar year, but at a minimum will include Easter, Thanksgiving, Christmas, and one additional holiday selected by Lessee.
- (3) Areas not Subject to Permitted Use. Lessee shall not be permitted to use the pipes and access points for Lithia water, the remnants of historic buildings or structures, or the remnants of Pompadour Springs. The Lessor retains all rights to use and maintain areas of historic significance on the Property without interfering with scheduled events and uses of Lessee.
- (4) Firearm Restrictions. The following firearms shall not be used on the shooting ranges:
  - (a) Firearms that exceed 6000 foot-pounds of muzzle energy; and
  - (b) Automatic Weapons, unless the weapon is being fired in a standard or semi-automatic mode.
- (5) Shotgun Range. Lessee may be required to reorient the shotgun range, discontinue skeet or trap shooting, or install mitigating measures, such as a shot curtain, to prevent harm to wetlands and other properties affected by shot distribution if necessary pursuant to the Lead distribution study completed by Lessor.
- (6) Overnight Events. Lessee shall only be permitted to have two (2) overnight event per calendar year in which participants stay overnight for a multiple day event on the Premises. The hours of operation for the shooting ranges must be strictly complied with during the course of the event.

- (7) Removal of Minerals and Gravel. Lessee shall not relocate or remove any minerals, rock, gravel or soil on or from the premises without the permission of the Lessor, except for the excavation and reclamation of Lead from the berms and ranges, which shall be done on a periodic basis in accordance with Section 4.4.

**4.3. Hazardous Waste.** Lessee may use or otherwise handle only those Hazardous Wastes typically used or handled in the prudent and safe operation of the use specified in section 4.1. Lessee shall refrain from causing Hazardous Wastes to be spilled, leaked, disposed of, or otherwise released on or under the Property. Lessee may store such Hazardous Wastes on the Property only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Wastes and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Wastes used, handled, or stored on the Property.

#### **4.4 Lead Remediation.**

- (1) Range Design and Best Management Practices. Lessee, in coordination with Lessor, shall hire a range designer to evaluate the premises and specify specific range management practices to implement with recommended deadlines in an Environmental Stewardship Plan (Plan), which shall be attached as Exhibit E upon completion.
- (2) Environmental Stewardship Plan. Lessee, in coordination with Lessor, will develop and adopt a management plan, also known as an Environmental Stewardship Plan, that, at a minimum, identifies remediation, prevention, and control strategies for Lead within 18 months of lease signing. All range management practices must comply with the Environmental Protection Agency's most current version of the *Best Management Practices for Lead at Outdoor Shooting Ranges* (EPA's Best Practices) to minimize and manage Lead contamination of the Premises. All requirements of the Plan shall be binding on Lessee. Lessee shall comply with the terms and timelines of the Plan developed as a result of the range designer's assessment and Lessor's environmental assessment and studies. Failure to develop the Plan shall constitute grounds for termination.
- (3) Lead Removal. Lessee currently conducts periodic Lead reclamation and recycling on the Premises. Lessee agrees to comply with the Lead Remediation & Removal Schedule (Schedule) that will be attached as Exhibit F at the conclusion of the Lead distribution study completed by Lessor. Lessee agrees to remove Lead as required by the Schedule in accordance with all applicable laws to minimize and manage Lead on the property. If the existence of Lead at any time in the future warrants testing and/or removal by requirement of environmental law, Lessor and Lessee agree to share the cost equally. On the expiration or termination of this Agreement, Lessee shall remove, at its own expense, all Lead from the Property that exceeds permissible levels, as identified in the Oregon Department of Environmental Quality's regulations for the potential uses of the property pursuant to a beneficial use determination or equivalent study.
- (4) Financial Security. Beginning in 2021, Lessor shall have the right to require Lessee to post financial security for environmental clean-up of the site related to the Gun Club's use as a condition of an extension under Section 2.3. Each year an extension is granted Grantee may be required to post at least a proportion of the total amount deemed necessary to perform Lead removal on the site. The amount and the form of the financial security must be approved by the Lessee, Finance Director, and City Attorney. It is the intention of the Lessor and Lessee that grants and other environmental remediation programs during the term of the Agreement will either reduce the amount of security or

make posting financial security unnecessary. However, if Lessee is more than six months late in complying with the Schedule or the Plan, Lessor can require Lessee to post financial security.

**4.5. Compliance with Laws.** Lessee shall, at Lessee's own cost and expense, comply with all federal, state, and local statutes, ordinances, regulations, rules and requirements, relating to Lessee's use and occupancy of the Property. This Lease does not authorize any use of the Property in violation of applicable land use laws and regulations.

**4.6. Environmental Assessment / Riparian Corridor.** The Lessor and the Lessee agree to complete additional testing recommended by the Oregon Department of Environmental Quality, including a lead distribution study and surface water testing, by January 31, 2012. At a minimum the lead distribution study shall: 1) determine the distribution of Lead on the premises and surrounding areas, 2) determine the volume of impacted soil, and 3) develop feasible remediation options that include time frames, costs, and ongoing monitoring and removal for the entire Property and other affected properties. The Lessee shall abide by the Water Resources Protection Chapter of the Ashland Municipal Code, including all prohibitions against alterations in the riparian corridor. If Lead is discovered in the riparian zones, then a plan will be developed to be approved by the Community Development Department Director that will address Lead removal, disposal, and restoration of the riparian zones. After any required Lead abatement is complete in the riparian area, Lessee will prevent future contamination of the riparian zone according to the Plan, and the riparian area will be protected, or removed from the leased premises by formal amendment at the discretion of the Lessor.

## **5. MAINTENANCE, REPAIRS AND RESTORATION.**

**5.1. Lessor's Obligations.** Lessor shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Property except for repairs and maintenance of the Lithia Springs Water facilities and other historic areas on the Property, including any existing lines or new lines that need to be installed to maintain Lessor's access to Lithia water, and maintenance of the riparian zones marked on Exhibit D. Lessor retains the right to adopt and institute a historical resource management plan for the benefit of historic areas marked on Exhibit C. Lessor will assume responsibility for any environmental clean-up that is required if the environmental assessment shows that there is contamination that is not the result of Lessee's activities.

**5.2. Lessee's Obligations.** Lessee shall be responsible for:

- (1) Repairs and maintenance of the boundary fence of the Property and Lessor's adjacent property described in Exhibit B.
- (2) Any repairs necessitated by the negligence of Lessee, its agents, employees, and invitees.
- (3) Any repairs or alterations required under Lessee's obligation to comply with laws and regulations as set forth in Section 4.4.
- (4) Any relocation or reorientation of Lessee's facilities that is required to allow for future construction, protection, and safe use of the Bear Creek Greenway.
- (5) The removal of Lead and Lead contamination from the Property that exceeds permissible levels, and payment for such removal as long as the Lead contamination is caused by Lessee's activities. Lessor acknowledges that Lead may be recycled and reused and that it may have value as a "scrap metal."

**5.3. Lessor's Interference with Lessee.** In performing any repairs, replacements, alterations, or other work performed on or around the Property, Lessor shall not cause unreasonable interference with use of the Premises by Lessee. Lessee shall have no right to an abatement of rent nor any claim against Lessor for any inconvenience or disturbance resulting from Lessor's activities performed in conformance with the requirement of this provision.

**5.4. Lessee's Duty to Restore Premises.** If at any time during the term of this Agreement, any improvements now or hereafter on the Premises are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Lessor, this Agreement shall continue in full force and effect. In such event, Lessee shall have the option of either causing the damaged or destroyed improvements to be removed from the Premises or, alternatively, Lessee may repair and restore the damaged improvements. In the event that Lessee causes the damaged or destroyed improvements to be removed from the Premises, Lessee may, at Lessee's discretion, cause replacement structures to be erected on the Premises.

## **6. OWNERSHIP OF ALTERATIONS.**

**6.1. Alterations Prohibited.** Lessee shall not make Alterations or improvements on the Premises without first obtaining Lessor's written consent, and Lessor's consent will not be unreasonably withheld. All Alterations shall be made in a good and workmanlike manner, and in compliance with all laws and building codes.

**6.2. Ownership and Removal of Alterations.** Title to all Alterations or improvements, existing or hereafter constructed on the Premises by Lessee shall be and remain the property of Lessee and may be removed by Lessee at expiration of this Agreement. In the event that Lessee fails to remove any Alteration located on the Premises at the expiration of this Agreement, then such Alteration shall be and become the property of Lessor. However, Lessor may elect to remove such Alterations and charge the expense of such removal, and the physical damage resulting from the removal, to Lessee. In the event Lessor elects to remove the Alterations, Lessor shall make its election within 60 days after expiration or termination of this Agreement and shall notify Lessee of any such election.

## **7. INSURANCE; INDEMNIFICATION; LIENS**

**7.1. Liability Insurance.** Lessee, at its sole cost and expense, commencing on the Effective Date, and continuing during the lease term, shall procure, pay for and keep in full force and effect comprehensive commercial general liability policy (occurrence version) in a responsible company with coverage for Bodily Injury and property damage liability, personal and advertising injury liability, blanket contractual liability, contractual liability for obligations assumed under this Agreement, and medical payments with a general aggregate limit of not less than \$2,000,000 per occurrence for combined single limit bodily injury and property damage claims, or \$500,000 per occurrence for bodily injury and \$250,000 per occurrence for property damage. Such insurance shall cover all risks arising directly or indirectly out of Lessee's activities on the Property or any condition of the Property. Such insurance shall name Lessor as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring 10 days written notice to Lessor before any change or cancellation of the policy shall be furnished to Lessor before Lessee's occupancy of the property.

**7.2. Indemnification.** To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold Lessor harmless from, and reimburse Lessor for, any cost, claim, loss, Bodily Injury (including injury resulting in death), or liability that is suffered directly or from a third-party

claim arising out of, or related to: 1) any activity of Lessee, or any agent, contractor, servant, invitee, licensee or employee of Lessee on the Property, 2) any condition of the Property in the possession or under the control of Lessee, 3) an act or omission of Lessee or any agent, contractor, servant, invitee, licensee or employee of Lessee, or 4) any failure by Lessee to perform all of its obligations under environmental laws, including any failure to perform during Lessee's previous occupation of the Property, or 5) any breach by Lessee under this Agreement. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Property, unless it is caused in whole or in part by Lessor's negligence.

This obligation to indemnify shall survive termination of the lease and include reasonable attorneys' fees, including attorneys' fees on appeal, and investigation costs and all other reasonable costs, expenses and liabilities incurred by Lessor or its attorney from the first notice that any claim or demand is to be made or may be made. In case that an action or proceeding is brought against Lessor because of such claim, Lessee, upon notice from Lessor, agrees to defend such action or proceeding by hiring counsel reasonably satisfactory to Lessor.

### **7.3. Liens.**

- (1) Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done, services rendered, or materials furnished to the 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. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.
- (2) Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or 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 the lien.

## **8. TAXES; UTILITIES.**

**8.1. Payment of Taxes.** Lessee shall pay all real property taxes and special assessments levied upon the leased Property during the term of the Agreement. Lessee shall not cause any liens or encumbrances to be imposed upon the leased Property and if any lien or encumbrance is imposed upon such Property, Lessee shall proceed to remove the lien or encumbrance immediately.

**8.2. Proration of Taxes.** Lessee's share of real property taxes and assessments for the years in which this Agreement commences or terminates shall be prorated based on the portion of the tax year that this Agreement is in effect.

**8.3. Utilities.** Lessee agrees to pay or cause to be paid all utilities utilized in connection with the Property during the term of this Agreement.

## **9. REPRESENTATIONS.**

**9.1. Lessor's Warranty.** Lessor warrants that it is the owner of the Property and has the right to lease it free of all encumbrances. Lessor will defend Lessee's right to quiet enjoyment of the Property from the lawful claims of all persons during the lease term.

**9.2. Lessee's Warranty.** Lessee warrants that it has the power to enter into this Agreement and that Lessee will abide by all of the terms and conditions of this Agreement.

#### **10. ASSIGNMENT AND SUBLEASING.**

No part of the Property may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Property be conferred on any third person by any other means, without the prior written consent of Lessor. This provision shall apply to all transfers by operation of law. No consent in one instance shall prevent this provision from applying to a subsequent instance. Lessor may withhold or condition such consent in its sole and arbitrary discretion.

#### **11. DEFAULT.**

**11.1. Default in Other Covenants.** If Lessee fails to comply with any term or condition or fulfill any obligation of this Agreement within 20 days after written notice from Lessor specifying the nature of the default with reasonable particularity, the Lessee shall be held to have breached the terms of this Agreement. If the default is of such a nature that it cannot be completely remedied within the 20-day period, then Lessee will not be found in default as long as Lessee begins correction of the default within the 20-day period, and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**11.2. Abandonment.** Failure of Lessee to occupy the Premises for 90 days or more shall result in default unless the Lessor consents to the absence in writing.

#### **12. REMEDIES ON DEFAULT.**

**12.1. Termination.** In the event of a default, the Agreement may be terminated at the option of Lessor by written notice to Lessee. Whether or not the Agreement is terminated by the election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default, and Lessor may reenter, take possession of the Property. Lessor may remove any persons or property by legal action or by self-help with the use of reasonable force, without liability for damages, and without having accepted a surrender.

**12.2. Damages.** In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

- (1) The loss of rent from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured for the Property.
- (2) The reasonable costs of reentry and re-letting including without limitation the cost of any cleanup, refurbishing, removal of Lessee's property and fixtures, costs incurred, or any other expense occasioned by Lessee's default including but not limited to, costs of environmental studies, assessments, and clean-up associated with the remediation of Lead on the Property, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

#### **12.3. Condition of Property.**

- (1) On expiration of the lease term, or earlier termination on account of default, Lessee shall deliver all keys to Lessor and surrender the Property free from all Lead and Lead contamination in excess of permissible levels, as determined by the Oregon Department of Environmental Quality, at its own expense. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the Alteration so allow. Depreciation and wear from ordinary

use for the purpose for which the Property is leased shall be excepted, but repairs for which Lessee is responsible shall be completed by the latest practical date before such surrender.

- (2) All Alterations, improvements and fixtures placed on the Premises during the lease term, other than Lessee's trade fixtures, shall be removed in accordance with Section 6.2. If Lessee fails to remove such fixtures, Lessor may do so and charge the cost to Lessee with interest at the legal rate from the date of expenditure.
- (3) Before expiration or other termination of the lease term, Lessee shall remove all furnishings, furniture, and trade fixtures that remain its property. If Lessee fails to do so, this failure shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by giving written notice to Lessee within 20 days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Lessor.

**12.4. Remedies Cumulative.** The rights and remedies of Lessor under this Agreement upon a breach thereof by Lessee are not exclusive and Lessor shall have all rights and remedies allowed under applicable law in addition to the rights and remedies contained in this Agreement.

### **13. MISCELLANEOUS PROVISIONS.**

**13.1. Non-waiver.** Waiver by either party of strict performance of any provision of this Agreement shall not waive or prejudice the party's right to require strict performance of the same provision or any other provision in the future. Lessor's acceptance of Lessee's failure to perform an obligation required annually under this Agreement, such as payment of taxes or hosting of the community events in Article 3, shall not affect Lessor's remedies for failure to perform such other obligations.

**13.2. Attorneys' Fees.** If any litigation is commenced between the parties to this Agreement concerning the Property, this Agreement, or the rights and duties of either party, the prevailing party in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum for that party's attorneys' fees, including attorneys' fees on appeal. The amount of the fees shall be determined by the court in that litigation or in a separate action brought for that purpose.

**13.3. Notices.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to a party of this Agreement shall be in writing and shall be deemed duly served and given when personally delivered to the party, any managing employee of the party, or, in lieu of personal service, when deposited in the United States mail, first class postage prepaid, addressed to the appropriate party as follows:

LESSOR  
City of Ashland  
20 E. Main St.  
Ashland, OR 97520

LESSEE  
Ashland Gun Club  
P.O. Box 953  
Ashland, OR 97520

**13.4. Governing Law.** This Agreement, and all matters relating to this Agreement, shall be

governed by the laws of the State of Oregon in force at the time any need for interpretation of this Agreement or any decision or holding concerning this Agreement arises.

**13.5. Binding on Successors.** This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

**13.6. Entry for Inspection.** Lessor shall have the right to enter on the Property at any time to determine Lessee's compliance with this Agreement or to make necessary repairs to the Property. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessor has received written notice from Lessee of the repairs that are required. In addition, Lessor shall have the right, at any time during the last twelve months of the term of this Agreement, to place and maintain on the Property notices for leasing or selling of the Property.

**13.7. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

**13.8. Entire Agreement.** This Agreement and its attachments constitute the sole and only agreement between Lessor and Lessee respecting the leasing of the Property to Lessee. Any agreements or representations respecting the Property, their leasing to Lessee by Lessor, or any other matter discussed in this Agreement not expressly set forth or incorporated into this Agreement are null and void.

**13.9. Recording of Agreement.** Lessor and Lessee may execute a memorandum of this Agreement, which shall be recorded in Jackson County, Oregon. The Memorandum of Lease shall describe the parties, set forth a description of the Property, specify the term of the Agreement and incorporate this Agreement by reference.

**13.10. Holdover by Lessee.** If the Lessee does not vacate the Property at the time required, the Lessor shall have the option to treat the Lessee as a Lessee from month to month, subject to all provisions of this lease except the provision for term.

**13.11. No Partnership or Joint Venture.** Nothing in this Agreement shall be construed to render the Lessor in any way or for any purpose a partner, joint venturer, or associate in any relationship with Lessee other than that of Lessor and Lessee, nor shall this Agreement be construed to authorize either party to act as agent for the other.

**13.12. Extraterritorial Regulation.** Nothing in this Lease shall interfere with the legislative authority of Lessor under ORS 226.010 or any other provision of state law.

**13.13. Non-appropriation.** Notwithstanding any other provision of this Agreement to the contrary, in the event that insufficient funds are appropriated for any obligation of the Lessor hereunder and the Lessor has no other lawfully available funds, then Lessor may terminate this Agreement at the end of its then current fiscal year and Lessor shall not be obligated to make subsequent payments under this agreement and this agreement shall terminate. Lessor agrees to deliver notice to Lessor of such termination within ten (10) business days from the determination by Lessor.

**INTENDING TO BE BOUND**, the parties have executed this Agreement as of the date written below.

**LESSEE:**

C.A. Parkin  
President, Ashland Gun Club, Inc.

21 July 2011  
Date

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**ORDER**

Pursuant to ORS 271.360 the governing body hereby approves and authorizes the terms of this lease as set forth above.

**LESSOR:**

John Stromberg  
Mayor, City of Ashland

7/19/11  
Date

Approved as to form

DM  
for Megan Thornton

**EXHIBIT 'A'**  
**LAND DESCRIPTION**

Commencing at a 1 inch diameter galvanized iron pipe with 2 ½ inch diameter bronze cap situated at the Section Corner common to Sections 12 and 13, Township 39 South, Range 1 East and Sections 7 and 18, Township 39 South, Range 2 East of the Willamette Base and Meridian, Jackson County, Oregon;

THENCE North 00° 07' 11" East along the section line common to Sections 12 and 7, said Township and Ranges, for a distance of 786.11 feet to a 5/8 by 24 inch iron rod with aluminum cap marked: City of Ashland, LS 759 for the TRUE POINT OF BEGINNING;

THENCE leaving said range line, North 89° 57' 38" West for a distance of 1340.70 feet to a 5/8 by 30 inch iron rod with aluminum cap marked: City of Ashland, Prop. Cor., LS 759 and situated in that boundary line common to Donation Land Claim No. 53 and Government Lot 8, Township 39 South, Range 1 East of the Willamette Base and Meridian, Jackson County, Oregon;

THENCE North 00° 13' East (deed record North, 462 feet) along said common boundary line for a distance of 462.00 feet to a 30 inch long by 1 inch diameter iron pipe with a 3 inch diameter bronze cap situated at the corner common to Government Lots 1, 8 and the East boundary line of Donation Land Claim No. 53, said Township and Range;

THENCE continuing North 00° 13' East (deed record North) (government record 273.9 feet) along said common boundary line for a distance of 278.42 feet to a found ¾ inch galvanized iron pipe with mushroom top situated at the ACCEPTED Northeast Corner of Donation Land Claim No. 53, said Township and Range;

THENCE continuing North 00° 13' East (deed record North) for a distance of 289.58 feet to the Northwest corner of that tract of land as set forth in Volume 182, Page 379 of the Deed Records of Jackson County, Oregon;

THENCE Easterly along the Northerly boundary line of said Volume and Page and being parallel with the Northerly boundary line of Government Lot 8, Section 12, Township 39 South, Range 1 East for a distance of 108 feet, more or less, to Emigrant Creek;

THENCE Southeasterly along said creek line to a point in the Easterly boundary line of that tract of land conveyed by the CITIZENS BANK OF ASHLAND to the CITY OF ASHLAND and set forth in Volume 182, Page 379-380 of the Deed Records of Jackson County, Oregon:

THENCE leaving said creek line, Southerly along the aforesaid Easterly boundary line for a distance of 200 feet, more or less, to a point in that boundary line common to Government Lot 8 and Donation Land Claim No. 51, said Township and Range:

THENCE South 89° 57' 38" East along the Southerly boundary line of Donation Land Claim No. 51, said Township and Range for a distance of 594.40 feet to a 30 inch long by 1 inch

diameter galvanized iron pipe with 3 inch diameter bronze cap situated at the Southeast corner thereof;

THENCE continuing South 89° 57' 38" East along the Southerly boundary line of Donation Land Claim No. 38, Township 39 South, Range 2 East of the Willamette Base and Meridian, Jackson County, Oregon for a distance of 680.35 feet to a 30 inch long by 1 inch diameter galvanized iron pipe with a 3 inch diameter bronze disk situated at the Southeast corner of said Donation Land Claim No. 38;

THENCE North 00° 11' 51" East along the boundary line common to Donation Land Claim No. 38 and Government Lot 5 for a distance of 73.37 feet to a 30 inch long by 1 inch diameter galvanized iron pipe with a 3 inch diameter bronze disk situated at the Northwest corner of Government Lot 5, Township 39 South, Range 2 East of the Willamette Base and Meridian, Jackson County, Oregon;

THENCE South 89° 47' 06" East along the Northerly boundary line of said Government Lot 5 for a distance of 306.00 feet to a 5/8 by 30 inch iron rod with aluminum cap marked: City of Ashland, Prop. Cor., 1992, LS 759;

THENCE leaving said government lot line, South 42° 17' 06" East for a distance of 130.70 feet to a 5/8 by 30 inch iron rod with aluminum cap marked: City of Ashland, Prop. Cor., LS 759;

THENCE South 63° 07' 06" East for a distance of 347.00 feet to a 5/8 by 30 inch iron rod with aluminum cap marked: City of Ashland, Prop. Cor. 1992, LS 759;

THENCE South 10° 37' 06" East for a distance of 185.50 feet to a point;

THENCE North 89° 57' 38" West for a distance of 942.11 feet to a point;

THENCE South 60° 30' 00" West for a distance of 281.23 feet to a point;

THENCE North 90° 00' 00" West for a distance of 232.58 feet to a point;

THENCE North 00° 07' 11" East for a distance of 40.00 feet to the point of beginning.

Together with and subject to covenants, easements, and restrictions of record and those apparent on the land.

LESSOR: City of Ashland  
c/o Parks and Recreation Commission  
340 S Pioneer Street  
Ashland OR 97520

Revised 7/31/08

LESSEE: Ashland Gun Club, Inc.

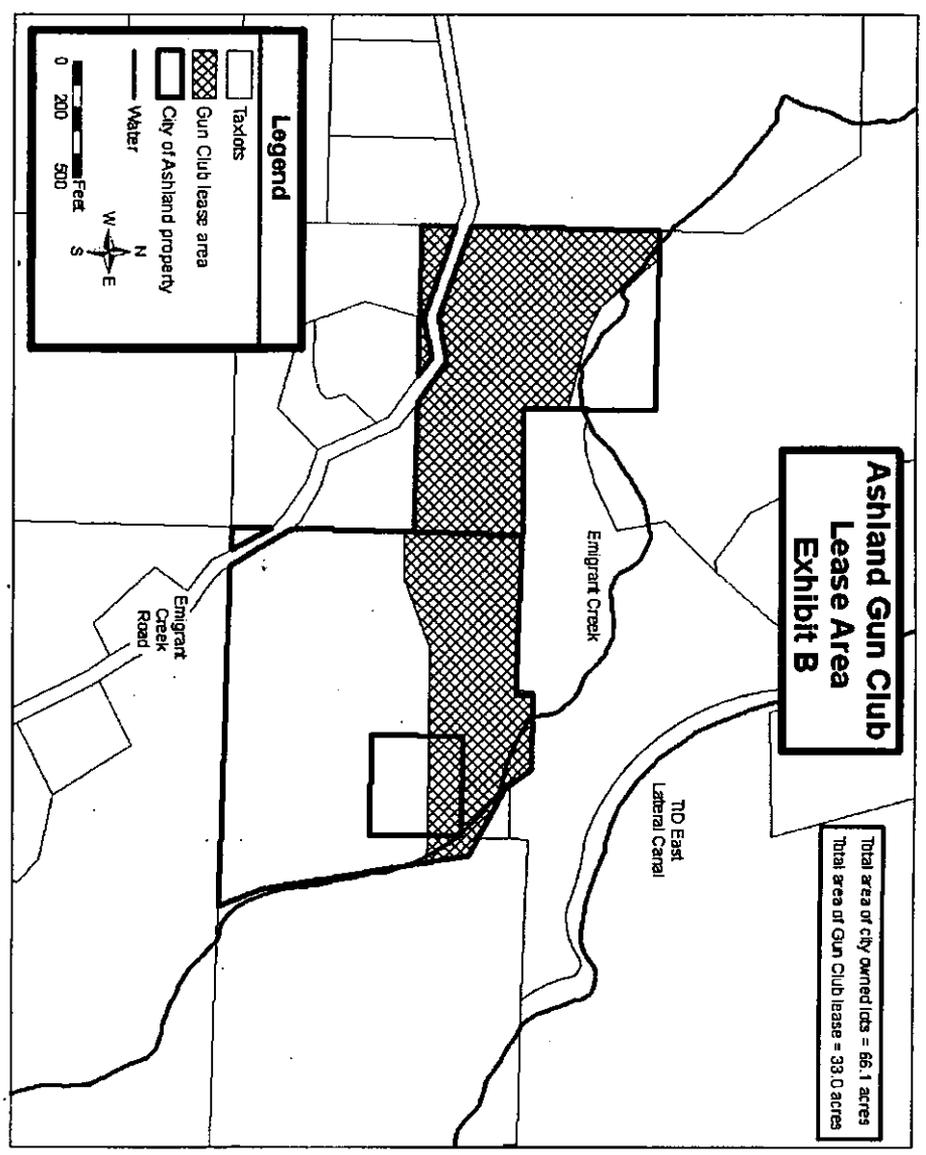


EXHIBIT C

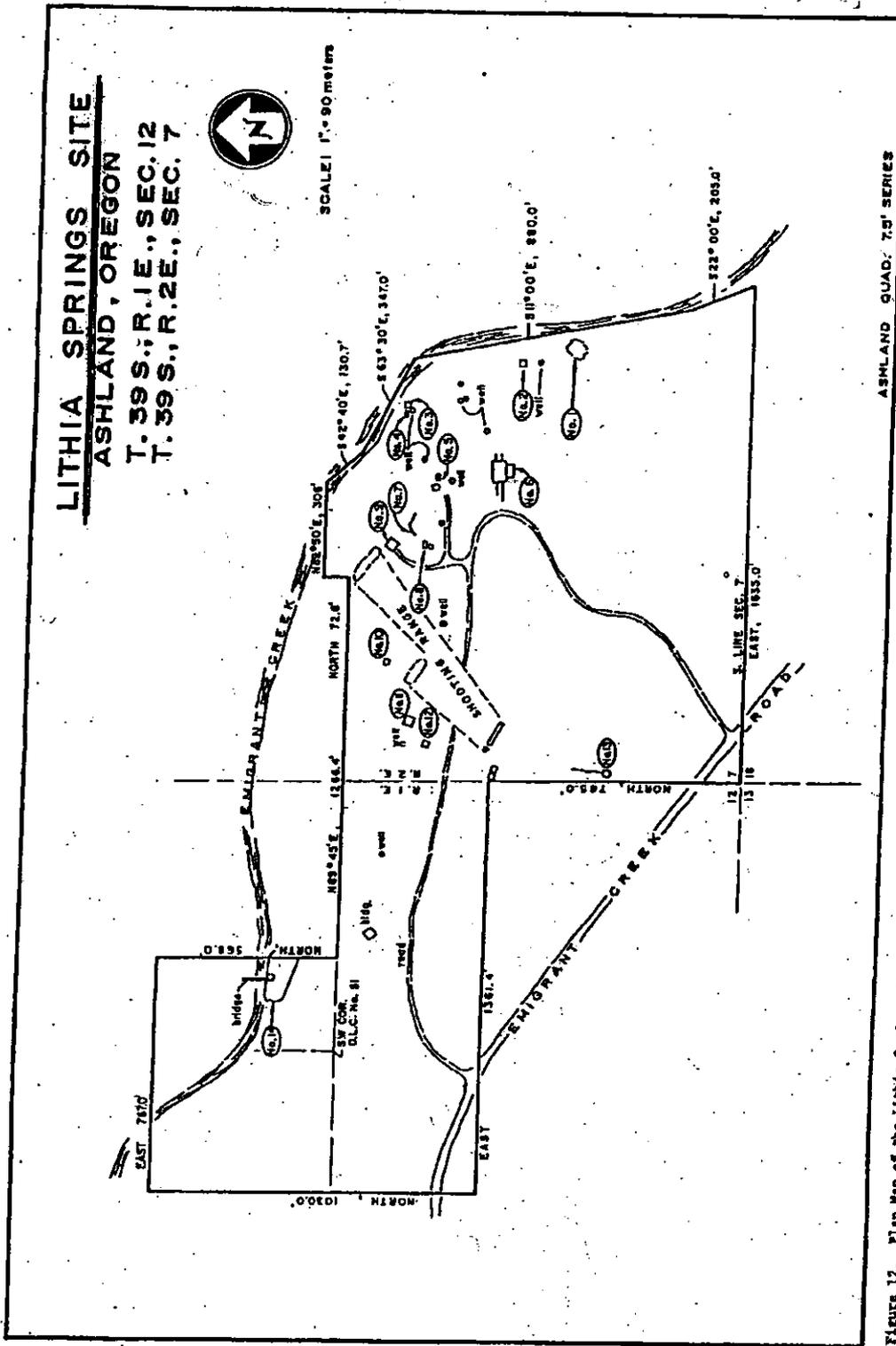
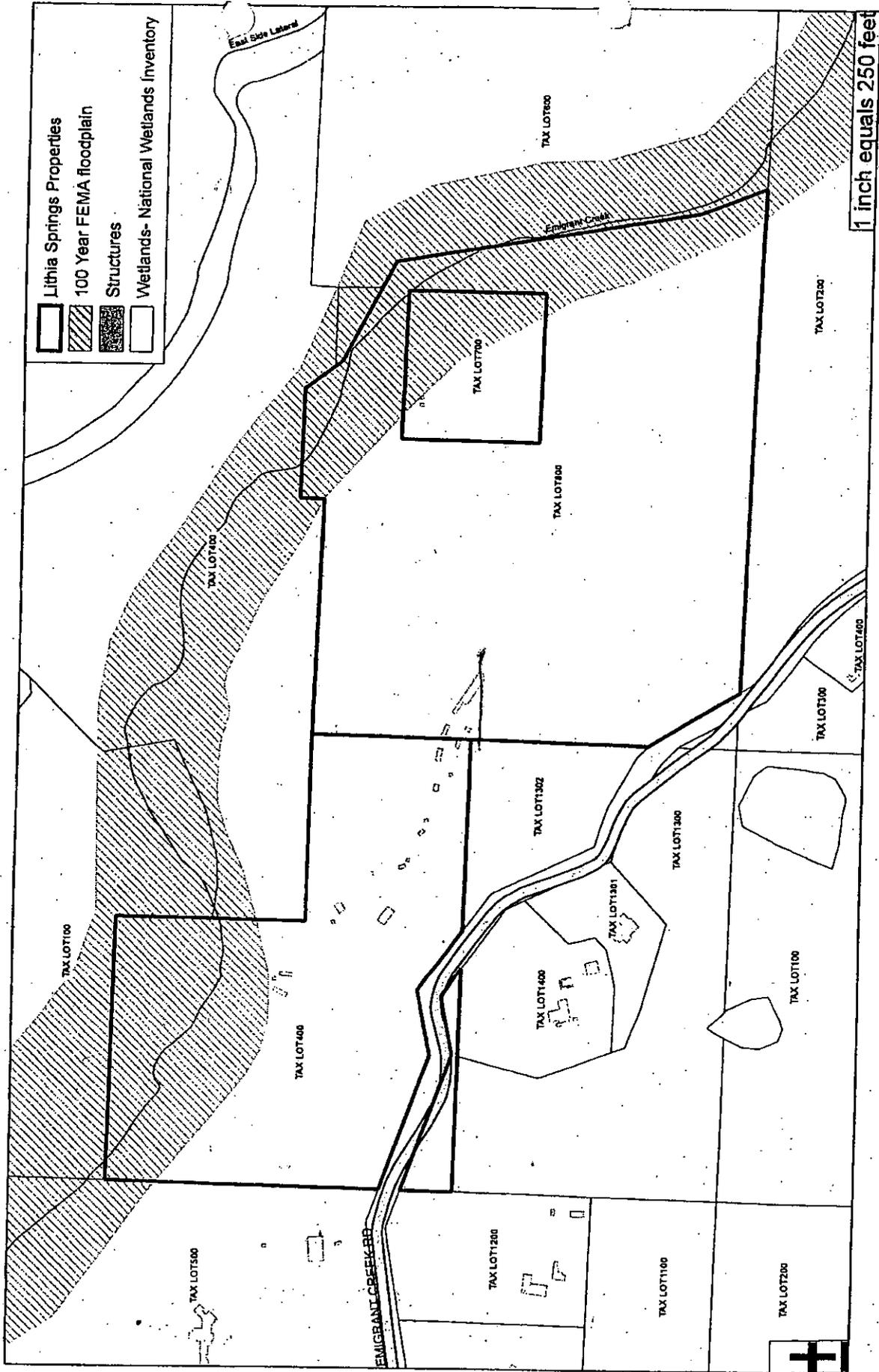


Figure 12. Plan Map of the Lithia Springs Site (ASTS #1). The circled numbers are features described in this report.

EXHIBIT D

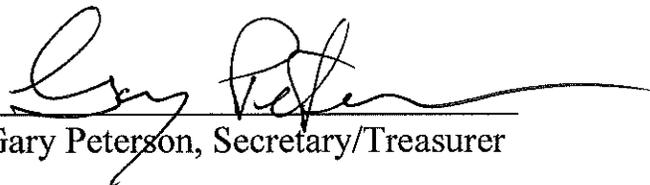


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**NOTICE OF LEASE EXTENSION**

Ashland Gun Club, Inc., as Lessee; hereby gives notice to the City of Ashland, as Lessor, that it requests extension of the Ashland Gun Club Lease Agreement pursuant to Section 2.3 of the Lease. Said Extension Term to run from July 1, 2021 through June 30, 2032, as provided in Section 2.3 of the Lease.

Ashland Gun Club Inc.  
dba Ashland Gun & Archery Club

By  2-1-2021  
Gary Peterson, Secretary/Treasurer

# Memo

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TO: Scott Fleury, Public Works Director

FROM: Tighe O'Meara, Police Chief

SUBJECT: Ashland Gun Club Lease

DATE: March 3, 2021

For your and Council's consideration in reference to the Ashland Gun Club lease extension:

The Ashland Police Department (APD) maintains a very strong, and essential relationship with the Ashland Gun Club (AGC). The APD relies heavily on this relationship to make sure our officers are trained in this critical area. If APD was not able to enjoy the use of this local facility, our ability to train to state-mandated levels would be greatly complicated. In addition, the cost for us to train would be significantly higher.

Please note as well that the APD uses practically every part of the AGC facilities throughout each year as it engages in various types of training.

The APD strongly supports the continued engagement with the ACG.

