

# General Fund.....

	2016-2017 Department Budget	General Fund Support		2016-2017 Department Budget	General Fund Support
BOPTA	\$4,991	\$3,991	Surveyor	\$73,178	\$14,678
Clerk/Elections	\$252,314	\$219,164	Sheriff		
Treasurer	\$114,048	\$106,288	Civil/criminal	\$1,951,825	\$133,525
Assessor	\$608,112	\$403,612	Search & Rescue	\$115,369	\$369
Tax Collector	\$124,979	\$87,079	Marine Patrol	\$249,226	\$13,494
District Attorney	\$389,677	\$340,577	Forest Patrol	\$119,606	\$22,421
Juvenile	\$594,378	\$484,584	Jail	\$1,503,985	\$1,231,185
Veteran's Services	\$84,775	\$47,323	911 Dispatch	\$797,905	\$496,405
RSVP	\$69,856	\$18,116	Parole & Probation	\$677,326	\$11,671
Clerk/Recording	\$247,902	\$19,842	Emergency Services	\$123,302	\$58,302
Other Requirements		\$376,579			
			<b>General Fund Total Support</b>		<b>\$4,089,205</b>

Mandated County Departments & Services	Non-Mandated County Departments & Services	Outsourced County Departments & Services
Board of Commissioners -General Legislative Authority	Building & Maintenance	Home Health
Assessor -Assess Property for Tax Purposes	Information Technology	Hospice
County Clerk -Board of Equalization -Conduct & Supervise Elections -Keep & Maintain Records	County Counsel	Human Services -Developmental Disabilities Programs -Alcohol & Drug Programs
District Attorney -Serve as Public Prosecutor -Supervise Medical Examiner	Fiscal Services	Community Development -Sanitation
Juvenile Officer -Corrections	District Attorney -Domestic Violence -Victim's Assistance	Public Health
Community Development -Adopt Comprehensive Plans & Land Use	Community Development -Building Department	Mental Health
Sheriff -Serve Civil Papers -Dog Control -Emergency Services -Provide a Jail Service -Search & Rescue -Warrants	Sheriff -Criminal -Corrections -Marine Patrol -Road Patrol	Animal Shelter
Surveyor -Provide & Keep Accurate Records -Cornerstone Preservation	Retires Senior Volunteer Program (RSVP)	
Treasurer -Receive all Money Due & Disburse	Road Department	
Human Services -Mental Health Commitment Hearings	Veteran's Services	**Necessary for Mandated Departments

## LEASE

Between Curry County, an Oregon General Law County, a political subdivision of the State of Oregon, (County / Lessor) and Elk River Development, LLC, an Oregon limited liability company, (ERD / Lessee).

### Description of Property

Certain Real Property Owned by Curry County located at Map 29 Section 15 Range 32 Township Tax Lots 298 and 299, either adjacent to or part of a property commonly known as Curry County Transfer Site, comprising 21 acres more or less, legally described by metes and bounds [NOTE: ERD to prepare metes and bounds to reflect differences from map and tax lot boundaries] and map on Exhibit A hereto (Premises/Property).

### Lease of Property from County to ERD

For purposes of this lease, the County will use an estimate of "real market value" for the property of \$100,000 based on comparable sales of large parcels on file with the County Assessor. County will lease property to ERD for \$6,000, such amount being 6% of the current "real market value", per year for the first 20 years, with three automatic renewals thereafter at the same rate as the first 20 years (such amount being \$6,000) and other good and valuable consideration as set forth herein. Upon satisfaction of the conditions herein, tenant shall have quiet enjoyment of the premises.

The initial rent payment shall be due upon the last to occur of the contingent conditions listed herein below under the conditions of payment and development, which ERD will seek obtain as soon as reasonably practicable and on each anniversary of the first payment pursuant to this Lease thereafter. Notwithstanding the foregoing, ERD may commence paying the rent prior to the occurrence of all of the contingent conditions in ERD's discretion.

### Use of Premises with Conditions

The lease is for the purpose of construction single family residential units for transient lodging, short-term or long-term rental use.

In consideration for the rights to use, possess and develop the land herein, ERD agrees to

1. Develop the property with residential uses to the density allowed under the current zoning, or as re-zoned at the expense of ERD;
  - a. Within 5 years execution of this lease, applicant will seek approval for development of the Property as set out in Exhibit B, (Conceptual Site Plan) and obtain approval of a final development permit from Curry County Community Development Department, Planning Commission or Board of Commissioners as applicable;
  - b. Within 10 years execution of this lease, ERD will have constructed at least one unit of housing;
  - c. Within 15 years of execution of this lease, ERD will have constructed at least four more units of housing;

- d. Within expiration of the first 20-year lease term, ERD will have fully built out the property substantially as described on Exhibit B attached hereto.

All time requirements contained in subsections 1 (a) – (d) above are suspended pending any challenges to the lawfulness of this lease or any development anticipated hereunder.

2. ERD agrees that the residential uses proposed to be developed will be used primarily by non-owners and that the non-owner residents (tenants) will pay a nightly or monthly use fee, of 6% of the overall rental rate, which will be owed to the county to be collected by ERD or its successor in interest.
- a. Overall rental rate includes rental fee, plus service fees, pet fees, wi-fi/internet, and other such add-on fees, but does not include the cost of meals or fees charged for activities or services conducted or obtained outside of the leased property, such as golf fees.
  - b. The fee will be owed by the tenants to the County.
  - c. Lessee will be responsible for collecting the fee and remitting all fees generated from the property to County on a quarterly basis. Remittals will be accompanied by forms developed by the County for the purpose of accounting for remittals. The County has the right to inspect the books and records of the Lessee.
  - d. Fees will be remitted to Curry County Board of Commissioners or its designee.
  - e. The fees will be allocated to the general fund for use at the discretion of the County.
  - f. Any late returns will be subject to a 5% penalty, which is a reasonable approximation of the County's cost for collecting the delinquent fees.
  - g. Lessee shall be allowed to retain 5% of all use fees collected as an administration fee.
  - h. In the event the County adopts a tax or fee such as a Transient Lodging Tax (TLT) that would apply to the development herein, Lessee will only be required to collect and tenants will only be required to pay one fee being the new tax rate or fee or the fee rate herein, whichever is greater. Any TLT revenues would be spent per applicable restrictions, not under subsections (d) & (e) above.

Prior to first entering any agreement for transient, short- or long-term rentals allowed herein, lessee shall provide to County a copy of lessee's proposed standard-form rental agreement. If the County does not provide objections or corrections within 30 days, the standard form agreement shall be allowed throughout the duration of the tenancy. Any amendments, or changes to the approved standard-form rental agreement shall be submitted for approval in the same manner as the initial rental agreements. The rental agreement shall acknowledge the presence of the solid waste facility and the tenants will agree to waive any claims against the County as a result of any claims arising out of the County's ownership and activities with respect to the solid waste facility.

All above conditions of payment and development of ERD are contingent upon: (i) Elk River Property Development, LLC (ERPD) or its successor obtaining approval for and developing the Pacific Gales Golf Course project, as described in Curry County land use file No. CUP \_\_\_\_; (ii) ERD obtaining all necessary approvals to develop the property substantially in accordance with the Conceptual Site Plan; and; (iii)

ERPD and ERD obtaining sufficient financing for Pacific Gales Golf Course project and the development of the property substantially in accordance with the Conceptual Site Plan. In the event ERPD, ERD or their successors are unsuccessful or unable to obtain approval or financing, as applicable, for any of (i) – (iii) above, the above conditions under this lease agreement are not binding; and either the County or ERD or their successors may terminate this lease for convenience and the property and all improvements thereon shall revert to the County. At its option, the County may require ERD to remove any improvements at ERD's sole expense.

#### Real Property Taxes

Lessee shall be responsible for paying to the proper authorities all other Federal, State and Local taxes that are imposed on the property.

#### Utilities

Lessee will be responsible for developing and maintaining all utilities that serve the property.

#### Development Permits Compliance with Laws

Lessee shall be responsible for obtaining and complying with all necessary Federal, State and Local permits for development, and shall comply with all applicable Federal, State and Local laws regarding Lessee's activities under this lease.

#### Property As-Is

Landlord makes no representation about the quality of the property. Lessee has had the opportunity to inspect to lessee's satisfaction and accepts the property As-is.

#### Environmental

The premises are located on or immediately adjacent to a de-commissioned landfill. The landfill is subject to a DEQ order that involves a Trust to monitor a plume of underground toxins through use of a series of test wells, in addition to on-site inspections and vegetation control including mowing, grubbing, herbicide spraying and burning.

Lessee and its assigns acknowledge the existence of the Landfill and this Trust, and agrees to hold harmless the Landlord, Curry County, its officers, employees, representatives and assigns; and to defend and indemnify same against any claims for damage, injury or death from the existence of the Landfill, the plume or the operations of the Trust as the result of the actions or inactions of the Lessee on the Premises. Lessee shall record a deed restriction to this effect after review and approval by County Counsel.

Lessee has had the opportunity to conduct environmental due diligence prior to entering this lease. If after the execution of this Lease Lessee learns of or encounters an environmental hazard that in the determination of Lessee, prevents Lessee from developing the property in substantial accordance with the Conceptual Site Plan or such development is not reasonably feasible due to costs, expense or health concerns, or any combination thereof, ERD or their successors may terminate this lease for convenience

and the property and all improvements thereon shall revert to the County. At its option, the County may require Lessee to remove any improvements at lessee's expense. If lessee refuses, County may remove the improvements and charge such costs back to the Lessee, its agents, representatives and assigns.

Non-Transfer / Non-Assignment

The property herein leased shall be held in single ownership by Curry County. No subdividing of the land shall be allowed. No creation of unit ownership shall be allowed. The rights of ERD under this lease may not be assigned or transferred without express written consent of Curry County, which consent shall not unreasonably be withheld; provided, however, that no consent of Lessor shall be required for any Transfer by Lessee to (i) one or more entities in which Lessee directly or indirectly owns at least twenty-five percent (25%) of the voting interests, (ii) any Lender as collateral security for Lessee's obligations under the financing documents Lessee has entered into with such financing parties (notwithstanding anything to the contrary contained herein, Lessee shall not encumber Lessor's fee interest in the Property with a Lender's Lien), (iii) a purchaser of the Golf Facilities, and/or (iv) to a purchaser of the ownership interests in Lessee. In the event Lessor's consent is required in connection with a Transfer by Lessee of all or any portion of its right, title or interest under this Agreement, then Lessee shall deliver notice of the same to Lessor, and if Lessor does not respond within sixty (60) days of the date of Lessee's notice of such Transfer to Lessor, then Lessor shall have deemed to have consented to such Transfer.

In the event that Lessee effects a Transfer of any of its rights under this Agreement, then the transferee, assignee, grantee or sublessee shall be subject to and bound by all of the terms and provisions hereof and Lessee shall structure any Transfer such that any notices, statements, demands, correspondence or other communications required or permitted to be given by Lessor under this Agreement shall be to only one legal entity.

No subdividing

Lessee shall hold the property in single ownership. No subdividing of the parcel is allowed unless expressly agreed in writing by the Curry County Board of Commissioners.

No liens allowed

Lessee shall only allow encumbrance on the property for purposes of development of this property. Any lien shall be subject to a 20% collateralization requirement; to wit: the loan shall be only allowed up to 80% of the value of the land and improvements. Other than expressly allowed, the lessee shall not allow any liens or mortgages to be placed on the property and the property shall not be used as collateral for any loan.

Any work for improvements on the property shall be undertaken only after Lessee obtains a construction permit and performance bond or letter of credit in favor of Lessor in such amount as to pay for the work undertaken.



Requirement of Lawful Activity – Nuisance Waste, etc. not allowed

Lessee agrees to obey all Federal, State and Local laws respecting activities on the property. Lessee shall not to make or allow any unlawful, improper or offensive use of the premises and agrees not to do anything or permit anything to be done upon said premises which in any way creates a nuisance, hazard or waste.

Insurance

Lessee shall be responsible to obtain a policy of insurance throughout the term of the lease in the amount of \$2,000,000 for individual and \$5,000,000 aggregate commercial general liability insurance naming Lessor Curry County, its officers, employees, representatives, agents and assigns as additional named insureds.

Indemnity/ Defend/ Hold Harmless

In consideration of Curry County agreeing to the terms herein specified, Lessee its employees, officers, agents, affiliates, and subsidiaries expressly agree, to the fullest extent permitted by law yet subject to the applicable limits in the Oregon Tort Claims Act limitations on liability and Oregon Constitution Article XI, section 9 & 10, to indemnify, defend, save harmless, discharge, release and forever acquit Curry County, our employees, officers, agents and assigns from and against any and all claims, demands, suits, and proceedings brought against Curry County, our employees, officers, agents, and assigns for loss, property damage, personal injury or death that are alleged to have been caused by the County in connection with the presence, use, misuse, maintenance, installation, removal, manufacture, design, operation or condition of the property covered by this agreement, or the associated areas surrounding such equipment. Lessee's duty to indemnify does not apply to the extent that the loss, property damage, personal injury or death is determined to be caused by or resulting from the sole fault of Curry County and/or its employees, officers, agents and assigns.

Lessor Right of Reverter

If Lessee fails to comply with any provision of this lease, Lessor shall have right of reverter, and the lessee's interest shall be forfeit. Any tenant improvements on the land shall forfeit to the Lessor. However, Lessor reserves the right to require Lessee to remove the improvements at Lessee's sole expense. If Lessee does not remove improvements after reasonable notice and opportunity, Landlord shall have the right to remove the improvements and charge costs to Lessee, its successors, officers, agents and assigns.

A default shall occur if

Lessee fails to perform any obligation imposed by this Lease and does not correct such failure within 30 days after receipt of written notice from Lessor's specifying the manner in which

Lessee has failed to adhere to any provision of this Lease Agreement. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Lessee begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

Lessee assigns or transfers this lease or sublets any of the premises subject to this lease without Lessor's prior consent.

Lessee files for bankruptcy or there is an action of creditors for same against or Lessee otherwise becomes insolvent.

Lessee otherwise breaches any material term of this lease.

In the event of default identified above, landlord shall be entitled to immediately terminate this lease and without liability, re-enter and take possession of the premises after reasonable notice to the Lessee.

The right of reverter is in addition to and does not eliminate or diminish landlord's right to pursue any other remedy available to Landlord at law or in equity.

Notice

Notice to the Landlord shall be sent to

Curry County Board of Commissioners  
94235 Moore Street, Suite 123  
Gold Beach, Oregon 97444

With Copy to

Curry County Legal Counsel  
94235 Moore Street, Suite 123  
Gold Beach, Oregon 97444

Notice to the Tenant shall be sent to

Elk River Development, LLC, c/o Jim Haley  
7011 Farnam, St.  
Omaha, NE 68132

With Copy to

Jennifer R. Klingensmith  
725 Country Club Rd.  
Eugene, OR 97401

Dispute Resolution / Choice of Laws / Choice of Venue / Attorney Fees

The parties will attempt to resolve any disputes herein by way of voluntary mediation. Single mediator or panel mediation will be the choice of the parties. The parties will split the cost of the mediator or panel. If the parties cannot resolve their disputes by mediation, any litigation will be filed in the State of Oregon Circuit Court for Curry County located in Gold Beach, Oregon. This agreement will be governed by Oregon Laws. In the event of litigation, including appeals, the prevailing party will be entitled to reasonable court costs and fees and attorney fees.

Ancillary Option to Purchase

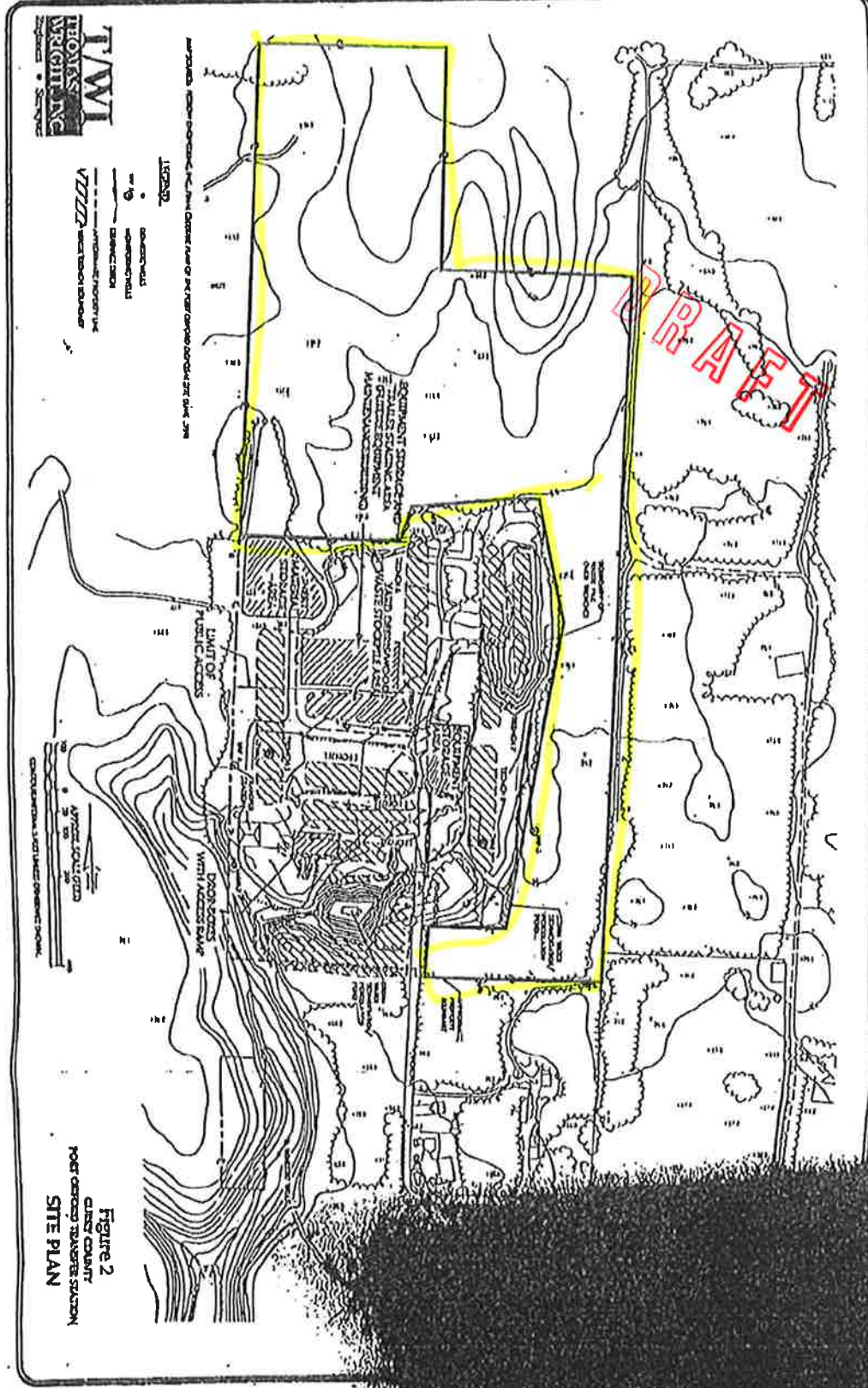
Ancillary to the lease and in consideration of 6% of the real assessed value at the time, the receipt of which is hereby acknowledged, County grants to ERD the Option to Purchase the property at the

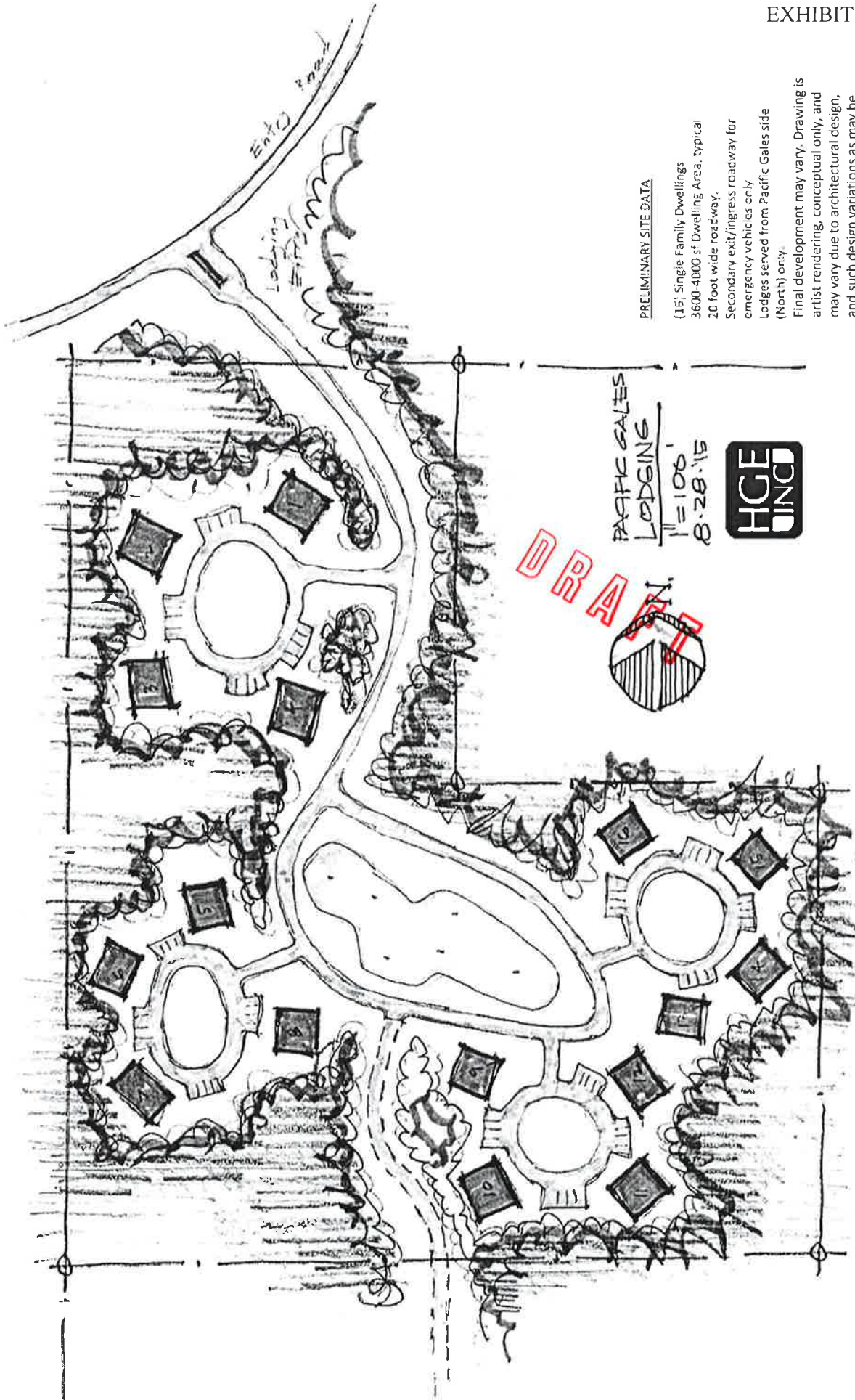


termination of the third automatic lease renewal herein. Purchase price shall be based on real market value less value of improvements.

Signature page

**DRAFT**





PRELIMINARY SITE DATA

(16) Single Family Dwellings  
 3600-4000 sf Dwelling Area, typical  
 20 foot wide roadway.  
 Secondary exit/ingress roadway for  
 emergency vehicles only  
 Lodges served from Pacific Gales side  
 (North) only.

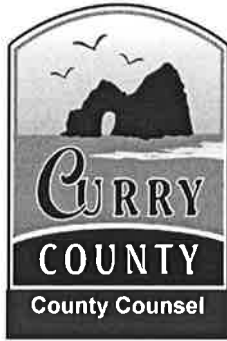
Final development may vary. Drawing is  
 artist rendering, conceptual only, and  
 may vary due to architectural design,  
 and such design variations as may be  
 necessary for development approvals.

**DRAFT**

PACIFIC GALES  
 LODGES  
 1" = 100'  
 8-28-15







## MEMORANDUM

FROM John R. Hutt, Curry County Counsel; Risk Manager

TO Board of Commissioners

RE: Proposed Lease Elk River Development

DATE: September 23, 2016

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### **Summary**

Elk River Property Development (ERPD) is developing the Pacific Gales Golf Course project. The Board of Commissioners has approved that project and the Board's decision was approved by the Oregon Land Use Board of Appeals. Pacific Gales intends to market its golf opportunities to a similar customer base as the existing Bandon Dunes golf complex in Coos County. However, Bandon Dunes has multiple on-site lodging options for its clients; Pacific Gales currently has none. ERPD desires to provide lodging options to its golf customers and others. The attached draft lease is intended to provide ERPD the option of constructing and providing lodging options to its customers through Elk River Development (ERD). As set forth below, the Board of Commissioners can find that the lease agreement is has a public benefit for the County and its citizens.

### **The Lease**

The lease begins by describing the parties and the property. It then describes an annual rental amount. The lease explains that the annual rental amount is not triggered until several events occur. In an exchange of promises, ERD would only be entitled to "quiet enjoyment" (possessory rights) to the property after it had completed several development deliverables. In this way, the County would still enjoy primary rights in the property until ERD had developed its project to the satisfaction of the County's public process for development. The lease is intended to provide ERD rights in the property for the described development purposes. If the development is not realized, the lease is terminable.

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### Development Deliverables

The different public development approvals required of ERD under the lease are among others: construction of the golf course project; approval of a site development; construction of lodging units; obtaining financing. Deadlines are imposed that describe a conservative estimate of the maximum times anticipated for the development deliverables.

### Protection of the County's ownership interests

The property consists at least in part of land that is on the same parcel as the Port Orford Landfill of which the County currently monitors with the State Department of Environmental Quality. The lease requires ERD to acknowledge the existence of the landfill and the nature of the plume that is being monitored. The lease requires ERD to defend, indemnify and hold the County harmless in any event, including any claims related to the landfill. The lease also requires ERD to include in its lodging agreements a provision whereby lodgers also acknowledge the existence of the landfill and agree to not make any claims against the County for those or other reasons. The lease requires ERD to obtain a policy of insurance naming the County and its officers, employees and representatives as additional named insureds.

### Benefits to the County

The lease site comprises approximately 21 acres adjacent to the landfill site. The lease mechanism allows the County to benefit from its landfill property without going through the expensive and time-consuming partition and sale process. The lease mechanism allows the County to realize revenue streams in at least three ways: First, annual rents after project completion; second, lodging fees of 6% of the total lodging rentals; and third, real property taxes for the improvements on the property.

The Board has been provided with a recent Economic Impact Analysis from the Bandon Dunes development. While not an apples-to-apples comparison, that report describes the benefits to the County as a community, aside from the above-described revenues to the County as an organization.

### Public Participation

In addition to the County's publicly-noticed work-session of September 28, 2016, approval of the lease, if any, would come only after the Board considers it after a public hearing during its October 4<sup>th</sup> or 19<sup>th</sup> meeting. Further, if the lease is approved, it requires ERD to publicly process an application for a master site plan, as well as all other permitting for project development.

### Conclusion

Based on the above, the Board can find that entering the lease with ERD is in the public interest.

Respectfully,



John R. Huttel  
Curry County Legal Counsel and Risk Manager