

LEASE

This Lease (“**Lease**”) is entered into by the University of Oregon (“**UO**”) and PHIT, LLC, an Oregon limited liability company (“**PHIT**”), effective the date of last signature of this Lease.

RECITALS:

- A. UO is the owner of the land and improvements known as Hayward Field (“**Hayward Field**”).
- B. PHIT is a single member limited liability company, the sole member of which is the University of Oregon Foundation (“**Foundation**”).
- C. The Foundation (formerly known as the “University of Oregon Development Fund”) is an independent, nonprofit public benefit corporation established under Oregon law, ORS Chapter 65. The Foundation is recognized as a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Foundation’s purpose is to raise, manage, distribute and steward private resources to support the mission and priorities of the UO. The Foundation Board of Trustees is responsible for overseeing the mission, leadership, and operations of the Foundation.
- D. The Foundation, through PHIT, desires to undertake certain development and construction projects to renovate and enhance Hayward Field on the University’s campus (the “**Hayward Field Enhancement Project**”; also referred to hereafter as the “**Project**”).
- E. To allow PHIT to perform the Hayward Field Enhancement Project, UO is willing to lease the Premises (as defined in Section 1.1) to PHIT, on the terms, conditions, and provisions of this Lease.

AGREEMENT:

UO leases the Premises to PHIT on and subject to the following terms, conditions, and provisions:

1. TERM; POSSESSION; RENT.

1.1 Term. The term of this Lease (“**Term**”) commences at 12:01 a.m. on June 11, 2018 (or such earlier date as the parties may agree), at which time UO will, subject to Sections 2.4 and 8, deliver to PHIT exclusive possession of those portions of UO’s campus outlined on the site plan attached hereto as Exhibit A (including the areas labeled thereon as “Lease Area” and “Shared Use Area”, but excluding the sidewalk located to the north of the 15th Avenue road surface and all property north of the sidewalk), as amended from time to time (“**Premises**”). Notwithstanding the foregoing, during the period beginning June 11, 2018 and ending June 18, 2018 (“**Preliminary Period**”), PHIT will not erect any fence or other barrier around the Premises. PHIT’s activities on the Premises during the Preliminary Period will be confined to the area identified in Exhibit A as “Grandstand” and will consist of salvaging wood from current structures. The Term will end at midnight on the earlier of April 1, 2020, or the date on which the Premises are tendered to the UO

after substantial completion of the Improvements, as defined in Section 2.5.1 below. The Term may be extended for reasonable cause subject to the written approval of both parties, which approval will not be unreasonably withheld.

1.2 Payments by PHIT. PHIT will pay UO a rent of one dollar in exchange for this Lease, which will be due and payable before the start of the Term. The parties do not intend that this Lease will result in any property tax liability to PHIT. If PHIT is assessed any property tax liability as a result of this Lease, UO will pay all taxes and, to the fullest extent not prohibited by applicable law, defend, indemnify, and hold harmless PHIT and its agents, employees, contractors, members, representatives, and directors from all costs, expenses, and other liabilities arising out of such assessment. As used in this paragraph, the term "property tax" will include all ad valorem real property taxes, ad valorem personal property taxes (not including any such taxes on the personal property of any contractor), special assessments, deferred ad valorem taxes, local improvement district assessments, and any other similar tax or assessment.

2. ALTERATIONS AND IMPROVEMENTS. During the Term, PHIT will have the right to (a) demolish any and all improvements, buildings, landscaping, hardscaping, and roadways located within the Premises, (b) unless UO has, to extent consistent with applicable law, provided prior reasonable instructions regarding specific materials, remove, haul away, dispose of, and reuse any and all materials resulting from the demolition of any and all improvements, buildings, landscaping, hardscaping, and roadways located within the Premises and (c) cause certain Project repairs, alterations, and improvements to be constructed, installed, and performed on the Premises as provided below in Section 2 ("Improvements"). The Project may require certain repairs, alterations, and improvements to be made to facilities, land, and structures owned by UO that are not located on the Premises but that contain utility, network, and other connections essential to the operation of Hayward Field, to establish necessary and appropriate connections between the Project and UO property that is not a part of the Premises ("Ancillary Improvements"). PHIT will coordinate with UO pursuant to Section 2.3 regarding the need for any such Ancillary Improvements and obtain UO's consent, which consent shall not be unreasonably withheld, conditioned, or delayed prior to constructing, installing, or performing any such Ancillary Improvements. PHIT will restore any portion of the UO's property affected by the installation of the Ancillary Improvements to substantially the condition they were in immediately prior to such installation (subject to the installed Ancillary Improvements and modifications necessary for such installation). To facilitate the Project, UO grants to PHIT a nonexclusive right of access, ingress, and egress to, over, and through the following areas for the duration of the Term to the extent reasonably necessary to Perform the project: (1) UO property adjacent to the Premises; and (2) upon UO's consent to any Ancillary Improvement, UO facilities, land, and structures to perform the approved Ancillary Improvement. PHIT will work together with UO to designate and coordinate the method and timing of use of access routes for this purpose. UO is responsible for coordinating any relocation of UO employees or UO property necessary to perform the Project. To the extent UO unreasonably refuses to grant PHIT the right to use any portion of the UO property reasonably necessary for the installation of the Ancillary Improvements, UO shall be responsible for all additional costs and expenses incurred by PHIT as a result of the need to redesign the Project including, without limitation, any costs arising out of the delay in completion of construction of the Project.

2.1 Design. UO approves the Project design concepts presented to UO on June 1, 2018 (the “**Approved Project Design**”). PHIT may make revisions to the design unless the revisions are, by PHIT’s reasonable determination, substantially inconsistent with the Approved Project Design. If the revisions are not substantially consistent with the Approved Project Design, the revisions will be subject to UO’s review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

2.2 Contractor Requirements. In connection with Project work:

2.2.1 PHIT will use only contractors and subcontractors that are properly licensed in Oregon, and will keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by or for PHIT. Any Project work performed, materials furnished, or obligations incurred will be at PHIT’s sole request and cost and not at the instance of or as agent for UO. PHIT will be solely responsible for obtaining and paying for any and all permits and licenses, but UO will cooperate with PHIT and use best efforts to assist PHIT with the process of obtaining the required permits and licenses.

2.2.2 PHIT will require its contractor and subcontractors of all tiers to pay applicable prevailing wages as required by law for the Project. The Project is subject to Oregon’s prevailing wage law, and PHIT will comply with all applicable prevailing wage statutes, regulations, and other requirements set forth in Exhibit B.

2.2.3 PHIT will require its contractor to competitively bid or procure the work as appropriate. This procurement may include, without limitation, bidding of the intended scope of work, interviewing selected bidders, negotiating with selected bidders, and awarding to the bidders, in PHIT’s sole discretion, that are best able to perform the work, based on price and other relevant factors. The selection need not be based solely on price. PHIT reserves the right not to competitively procure any aspect of the Project if, in PHIT’s sole discretion, it is in the best interest of the Project. PHIT has the right to purchase directly and as a sole source any aspects of the Project that are not competitively procured.

2.2.4 PHIT will require its contractor to use good faith efforts in the solicitation of minority-, women-, and veteran-owned businesses as well as emerging small businesses for the Project and will maintain records of such efforts and the actual usage of such businesses.

2.2.5 PHIT is not and will not, in any way, be acting as a public agency with respect to the Project nor will any provision of this Lease require PHIT to act as a public agency. However, the parties understand that the prevailing wage requirements in ORS 279C.800 to 279C.870 apply to the Project and that, for purposes of prevailing wage requirements, the Project is a “public works” pursuant to ORS 279C.800. Except as provided in the foregoing sentence, it is the intent of the parties that the Project is not and will not be deemed a public project or public improvement.

2.3 Coordination Committee. UO shall appoint a representative who shall be PHIT’s primary point of contact with respect to the construction of the Project (the “UO Project Representative”). The UO Project Representative will initially be Mike Harwood, but UO shall

be entitled to change the UO Project Representative at any time and from time-to-time at its sole discretion by providing written notice thereof to PHIT. The UO Project Representative, PHIT, and a representative of PHIT's contractor shall meet regularly and in no circumstance less often than monthly to discuss the progress of the Project, the scope of any Ancillary Improvements that need to be made, UO's reasonable needs for access to the Shared Use Areas, any other Project coordination issues, and any approvals required hereunder for the Project.

2.4 Shared Use Areas.

2.4.1. UO acknowledges that, except for the area identified as Shared Use Area that is excluded from the Premises pursuant to Section 1.1, the portion of 15th Avenue within the Premises ("Shared 15th Avenue Area") will be within PHIT's construction fences and under construction for the entire Term of this Lease. Accordingly, PHIT shall have exclusive use and control thereof. UO shall be entitled to use the Shared 15th Avenue Area during the Term of this Lease, however, PHIT shall be entitled to demolish and reconstruct the improvements within the Shared 15th Avenue Area provided it reasonably coordinates and schedules such work with UO so as to reasonably reduce any interference with UO's use of the adjacent buildings located to the north of 15th Avenue.

2.4.2 To the extent that PHIT's use of 15th Avenue results in UO being unable to occupy or have occasional access to its buildings along 15th Avenue for specific instances, UO shall use its reasonable efforts to satisfy the applicable occupancy requirement or provide such access through alternate means. UO and PHIT shall reasonably collaborate to resolve any conflicts over access to 15th Avenue, recognizing that PHIT shall maintain control over the construction activities that are occurring within 15th Avenue. If, notwithstanding such efforts, the buildings along 15th are in violation of the Americans of the Americans with Disabilities Act of 1990 ("ADA") due to PHIT's use of 15th Avenue or the Eugene Springfield Fire Marshal's Office or the UO Fire Marshal's Office deems there to be a life safety event violation, UO and PHIT shall reasonably cooperate to identify a means of resolving the violation.

2.4.3 Notwithstanding anything to the contrary herein, PHIT agrees that it will leave the entirety of 15th Avenue open during the period of June 19, 2018 to June 30, 2018 to accommodate student move-out. PHIT also agrees that it will consider proposals from UO to accommodate student move-in and move-out at the beginning and end of the fall and spring terms. PHIT agrees to provide clear and consistent directional signage for all sidewalks, roads, entrances, and other public right of ways that are unavailable.

2.4.4 With respect to the Shared Use area located to the south of the existing Hayward Field (the "18th Avenue Shared Use Area"), UO shall be entitled to reasonable use of the 18th Avenue Shared Use Area during the Term of this Lease, however, PHIT shall be entitled to demolish the improvements within the 18th Avenue Shared Use Area provided it coordinates and schedules such work with UO so as to reasonably reduce any interference with UO's use of adjacent playing fields.

2.5 Surrender of Premises With Improvements; Close Out Procedures.

2.5.1 On or before the end of the Term: (a) PHIT will remove its personal property from the Premises and cause its contractor and its subcontractors to remove their personal property from the Premises (except to the extent reasonably necessary to complete punch list items and otherwise complete project close out as provided below in this Section 2.5.1 and Exhibit C); and (b) PHIT will surrender the Premises to UO with the Improvements and Ancillary Improvements substantially completed such that Hayward Field and the entirety of the Premises (including, for example, the turf fields west of Hayward Field) can be used for their intended purpose subject only to so-called “punch-list” items for final completion of the Improvements and Ancillary Improvements.

2.5.2 PHIT’s design, construction and installation of the Project Improvements is a private project, but PHIT will return the Premises to UO at the end of the Term with the Project Improvements as a gift-in-kind to UO. At and after the end of the Term, Project close-out will occur as provided in Exhibit C attached hereto, and UO will execute an Assignment and Assumption Agreement in the form included as Attachment 1 to Exhibit C, which includes the assignment of retainage or bonds and securities deposited pursuant to Section 1 of Attachment 1 to fulfill the payment obligations of Section 6.3 of Attachment 1. UO shall have sole responsibility for all maintenance and repair of the Premises after the end of the Term and PHIT is completely released by UO from all responsibilities under this Lease, except as otherwise stated in this Lease.

3. CONDITION OF PREMISES. Except as otherwise provided in this Lease, PHIT accepts the Premises in its “AS-IS” condition with all faults, including both latent and patent defects. UO and UO’s agents, employees, and trustees are not making, have not made, and expressly disclaim any representations or warranties, express or implied, with respect to the Premises. However:

3.1 Hazardous Materials. PHIT is not responsible for the existence of any hazardous materials at, on, or under the Premises prior to the Term. UO has arranged, or will arrange, and will pay for an environmental assessment to be conducted with respect to the Premises or any other portion of Hayward Field that will be impacted by the Project. If any hazardous material is discovered at the Premises and if it is possible to remediate the hazardous material condition in a way that does not substantially and materially change the design, engineering, or construction timeline for the Project, or substantially and materially increase the Project construction cost, then UO will undertake and be responsible for the cost of remediation of the hazardous material condition (including any action required by applicable environmental law to: (a) clean up, remove, treat or in any other way address hazardous material, (b) prevent the release or minimize the further release of hazardous material, or (c) investigate and determine if remediation is required). As used in this Lease, hazardous material includes: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, or gas, whether naturally occurring or manmade, that is defined as hazardous, toxic, a contaminant, or words of similar import or regulatory effect under any environmental law; and (b) any petroleum or petroleum by-products or degradation products, radon, radioactive materials or wastes, lead paint, asbestos in any form, urea formaldehyde foam insulation, methane-generating wastes (such as wood chips and other wood wastes), and polychlorinated biphenyls. Also as used in this Lease, environmental law includes federal, state or local statutes, laws, rules, ordinances, codes, regulations, permits, authorizations, judgments,

directives, and orders applicable to the Premises and relating to protection of human health or the environment (including ambient and indoor air, surface water, ground water, drinking water, wildlife, plants, land surface or subsurface strata), and including any statutes, regulations, binding administrative decisions or orders relating to releases or threatened releases of hazardous materials or otherwise relating to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport, remediation or handling of hazardous materials. If any hazardous material is discovered at the Premises and if it is not possible to remediate the hazardous material condition, either party may terminate this Lease, and UO and PHIT shall reasonably agree on a method to restore the Premises to a usable condition. UO will, to the fullest extent not prohibited by applicable law, indemnify, defend, and hold harmless PHIT for, from, and against any and all liability, damages, expenses, judgments, proceedings, and causes of action based on the presence of hazardous materials on the Premises that are not introduced therein by PHIT or its contractors.

3.2 Easements and Encumbrances. PHIT is also not responsible for any easements and other encumbrances including, without limitation, the cell phone tower and other exceptions to title shown on the July 5, 2016 Status of Record Title Report attached as Exhibit D, to the extent that such encumbrances affect the Premises and adversely affect the Project ("Encumbrances"). UO, at its sole expense, will take all action necessary, or reimburse PHIT for all action necessary, to remove or relocate any such Encumbrances so that they do not delay or otherwise affect the Project. UO will commence, or authorize PHIT to commence, such removal or relocation of any Encumbrances the existence of which would delay or otherwise affect the Project within thirty (30) days of receipt of written notice requesting such removal or relocation. In the event UO does not use PHIT's contractor for the Project for such removal or relocation, UO and PHIT will, before UO commences such work, negotiate a completion date consistent with the overall Project schedule and liquidated damages to be paid to PHIT by UO in an equitable amount but not less than \$500 per day in the event such work is not completed in a timely manner. In lieu of removal or relocation of Encumbrances, UO may obtain the necessary consent so that Encumbrances do not delay or otherwise affect the Project.

3.3 Latent Conditions. If PHIT subsequently discovers the presence of hazardous material at the Premises or determines that there are latent defects that substantially and materially change the design, engineering, or construction timeline for the Project or substantially and materially increase the Project construction cost, PHIT may immediately, upon notice to UO, terminate this Lease. If any such termination is due to hazardous material, latent defects, or Encumbrances, PHIT will restore the Premises to a condition that is substantially the same or better condition than it presently exists at the date hereof, but only if and after UO (at UO's and not PHIT's expense) promptly remediates the hazardous condition, remedies the latent defect, or removes the impediment of the Encumbrance, if necessary to complete the restoration, such that PHIT may undertake the restoration work without incurring any liability or obligation for the hazardous condition, latent defect, or Encumbrance; otherwise UO will be responsible for any required restoration of the Premises.

4. INSURANCE AND INDEMNITY.

4.1 PHIT's Indemnity of UO. To the extent of its insurance on the Project, PHIT will indemnify, defend, and hold harmless UO (including its employees and trustees) from and against

any and all liability, damages, expenses, judgments, proceedings, and causes of action based solely on claims by third parties for injury to or death of any person or damage to or destruction of any property arising out of PHIT's use or occupancy of the Premises, provided, however, such obligation only applies to the extent of PHIT's or PHIT's managers, officers or employees negligence, or willful or intentional misconduct. PHIT's indemnification obligations under this paragraph will survive the expiration or termination of this Lease.

4.2 UO's Indemnity of PHIT and Insurance. UO will indemnify, defend and hold PHIT harmless as provided in Exhibit C.

4.3 PHIT's Insurance. PHIT or its contractor will maintain the insurance specified on Exhibit E on the Premises during the Term.

5. ASSIGNMENT. PHIT may not assign this Lease or sublicense the whole or any part of the Premises without the prior written approval of UO, which approval UO may grant or withhold in UO's sole and absolute discretion.

6. COMPLIANCE WITH LAW.

6.1 During the Term, all obligations of PHIT under this Lease and actions taken by PHIT pursuant to this Lease will comply with all applicable statutes, regulations, rules, and other legal requirements of all federal, state, county and municipal authorities having jurisdiction over the Premises. This includes, but is not limited to, compliance with (a) the ADA; (b) applicable Oregon Building Codes; (c) all laws, regulations, rules, and policies established pursuant to the foregoing laws; and (d) all laws, regulations, rules, and policies specifically made applicable by reference in this Lease.

6.2 Notwithstanding the requirements of Section 6.1, UO is solely responsible for performing all actions necessary to maintain the tax-exempt status of all bonds associated with the Premises and any improvements on the Premises.

7. TERMINATION. PHIT may, at any time and without cause terminate this Lease and return the Premises to UO in substantially the same or better condition than it presently exists as of the date hereof. In addition, in the event of a material breach of this Lease by PHIT or UO, the party not in breach may terminate this Lease. The right to terminate this Lease is not an exclusive remedy, and a party may singularly, successively, cumulatively, simultaneously or concurrently pursue all rights and remedies available to the non-breaching party at law or in equity.

8. UO's ACCESS TO PREMISES. In addition to the requirements of Section 2.4, after obtaining PHIT's consent, which will not be unreasonably withheld, conditioned or denied, during the Term of this Lease, UO and UO's agents may enter the Premises: (a) to inspect the general condition of the Premises, (b) to carry out its obligations with respect to the cell tower on the Premises, (c) to perform such duties as UO is obligated to perform under this Lease or applicable law or policy, and (d) to engage in other activities that have been coordinated in advance with PHIT that will not interfere with the activities of PHIT (including PHIT's contractors) at the Premises during the Term. UO's Police Department may enter the Premises at all times without

PHIT's consent in order to enforce controlling state and federal laws, municipal ordinances, and UO policies, rules, and regulations. In the event of an emergency arising within the Premises which endangers property or persons, the consent requirement is waived by PHIT.

9. CONDITIONS TO LEASE.

9.1 This Lease is subject to the approval of PHIT's Board of Managers on or before June 12, 2018; if such approval is not obtained by the date, PHIT may terminate this Lease by written notice to UO given no later than June 15, 2018.

9.2 This Lease is subject to the PHIT Board of Managers approval of the construction contract with its general contractor and design professionals on or before June 1, 2018; if such approval is not obtained by the date, PHIT may terminate this Lease by written notice to UO given no later than June 10, 2018.

10. MISCELLANEOUS

10.1 Mutual Cooperation. The parties hereto will cooperate with each other to accomplish the Project and will use all reasonable efforts to cause the fulfillment of the conditions to the parties' obligations hereunder and to provide, or obtain from any third party, as promptly as possible, all consents, authorizations, orders, or approvals required in connection with the Project and this Lease. The parties will execute such further documents and take such actions as may be necessary or convenient to accomplish the purposes of the Project and this Lease.

10.2 Governing Law. This Lease will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

10.3 Force Majeure. Neither UO nor PHIT will be held responsible for delay or default caused by fire, riot, acts of nature, terrorist acts, or other acts of political sabotage, or war where such cause was beyond, respectively, UO's or PHIT's reasonable control. PHIT will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligation under this Lease. However, if a default or delay due to a force majeure event continues for an unreasonable time, as determined by either party, then such party is entitled to terminate the Lease pursuant to the terms of Section 7. In the event it is commercially unreasonable for PHIT to commence or complete construction of the Project as a result of an event of force majeure, PHIT shall have no liability to UO therefor and, to the extent construction has already commenced, UO and PHIT shall reasonably agree on a method to restore the Premises to a usable condition.

10.4 Binding Effect. All of the provisions contained in this Lease are binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

10.5 Rules of Interpretation. All of the provisions of this Lease are to be construed as a whole and not strictly for or against any party.

10.6 No Partnership or Other Venture. This Lease is not intended to create, nor will it in any way be interpreted or construed to create, a joint venture, partnership, agency, or any other similar relationship, including a joint employer relationship, between the parties.

10.7 Waiver. Failure of UO or PHIT to enforce any provision of the Lease will not constitute a waiver or relinquishment of the right of performance in the future nor of the right to enforce any other provision of this Lease.

10.8 Counterparts. This Lease may be executed in several counterparts, each of which will be an original, all of which, together, will constitute one instrument.

10.9 Attorney Fees. In any dispute involving the interpretation or enforcement of this Lease or involving issues related to bankruptcy (whether or not such issues relate to the terms of this Lease), the prevailing party will be entitled to recover from the non-prevailing party reasonable attorney fees, paralegal fees, costs, disbursements, and other expenses incurred by the prevailing party in the dispute, including those arising before and at any trial, arbitration, bankruptcy, or other proceeding, and in any appeal or review thereof. In addition, the amount recoverable by the prevailing party will include an amount estimated as the fees, costs, disbursements, and other expenses that will be reasonably incurred in collecting a monetary judgment or award, or otherwise enforcing any order, judgment, award, or decree entered in the proceeding.

10.10. Authority. Each party represents it has full authority to sign this Lease.

10.11 Survival. All obligations of a party to this Lease which, by their nature, are continuing, will survive expiration or termination of this Lease (except to the extent that the party is released or the obligation is assumed pursuant to this Lease).

10.12 Notices. A notice or communication under this Lease by either party to the other party must be in writing and delivered by registered or certified mail, postage prepaid, return receipt requested and by regular first-class mail, or, subject to the provisions of the last paragraph of this Section 10.12, via email, addressed as follows (or to such other address as a party may designate for itself by notice to the other party pursuant to this Section 10.9):

If to UO:
Vice President for Finance and Administration
1283 University of Oregon
Eugene , OR 97403-1283
Office: Johnson Hall, 103
Email: ypfa@uoregon.edu

If to PHIT:
c/o University of Oregon Foundation
Attn: _____
PO Box 3346
Eugene, OR 97403
Email: _____ @ _____

with a copy to:
Office of the General Counsel
1226 University of Oregon
Eugene , OR 97403-1226
Office: Johnson Hall, Room 219
Email: gounsel@uoregon.edu

with a copy to:
Gleaves Swearingen, LLP
Attn: Patricia L. Chapman
975 Oak Street, Suite 800
Eugene, OR 97401-3156
Email: chapman@gleaveslaw.com

and to
Stoel Rives LLP
Attn: Andrew H. Solomon
760 SW Ninth Avenue, Suite 300
Portland, OR 97205
Email: andrew.solomon@stoel.com

Notice given by mail pursuant to the first paragraph of this Section 10.12 will be considered received on the earlier of (a) the date of actual receipt, or (b) three (3) days after the date of mailing.

Alternatively, a notice or communication under this Lease by any party to any other party may be sent by email, addressed to a party pursuant to the provisions of this Section 10.12, but will be effective only if the sender receives a reply from the addressee confirming receipt, in which event it will be deemed effective the next day after the email is sent or, if the next day is a weekend or federal holiday, on the next business day after it is sent.

10.13 Recording Memorandum of Lease. UO may elect that a recordable Memorandum of Lease, executed and acknowledged by both parties, be recorded in the public records of Lane County, Oregon. UO shall pay the recording costs.

10.13 [Intentionally Deleted].

10.14 Entire Agreement. This Lease (including its Recitals and Exhibits, which are a part of this Lease as if fully set forth in the body of this Lease) constitutes the entire agreement of the parties with respect to the matters set forth in this Lease, supersedes all prior or contemporaneous oral or written agreements with respect to the matters set forth in this Lease, and may not be modified, amended or supplemented except in writing and signed by the parties.

UO:

University of Oregon

By:

Name: Greg Shabram

Title: Director, PCS

Date: June 7, 2018

Attachments:

Exhibit A: Site Plan Depicting Premises

Exhibit B: Prevailing Wage Rate Law Compliance

Exhibit C: UO Undertakings regarding Liability and Indemnity (with Attachment 1 – Assignment and Assumption Agreement)

Exhibit D: Title Report

Exhibit E: PHIT's Insurance Requirements

PHIT:

PHIT, LLC

By:

Name: Phillip H. Koenig

Title: _____

Date: 6/8/18

Exhibit A
Site Plan Depicting Premises

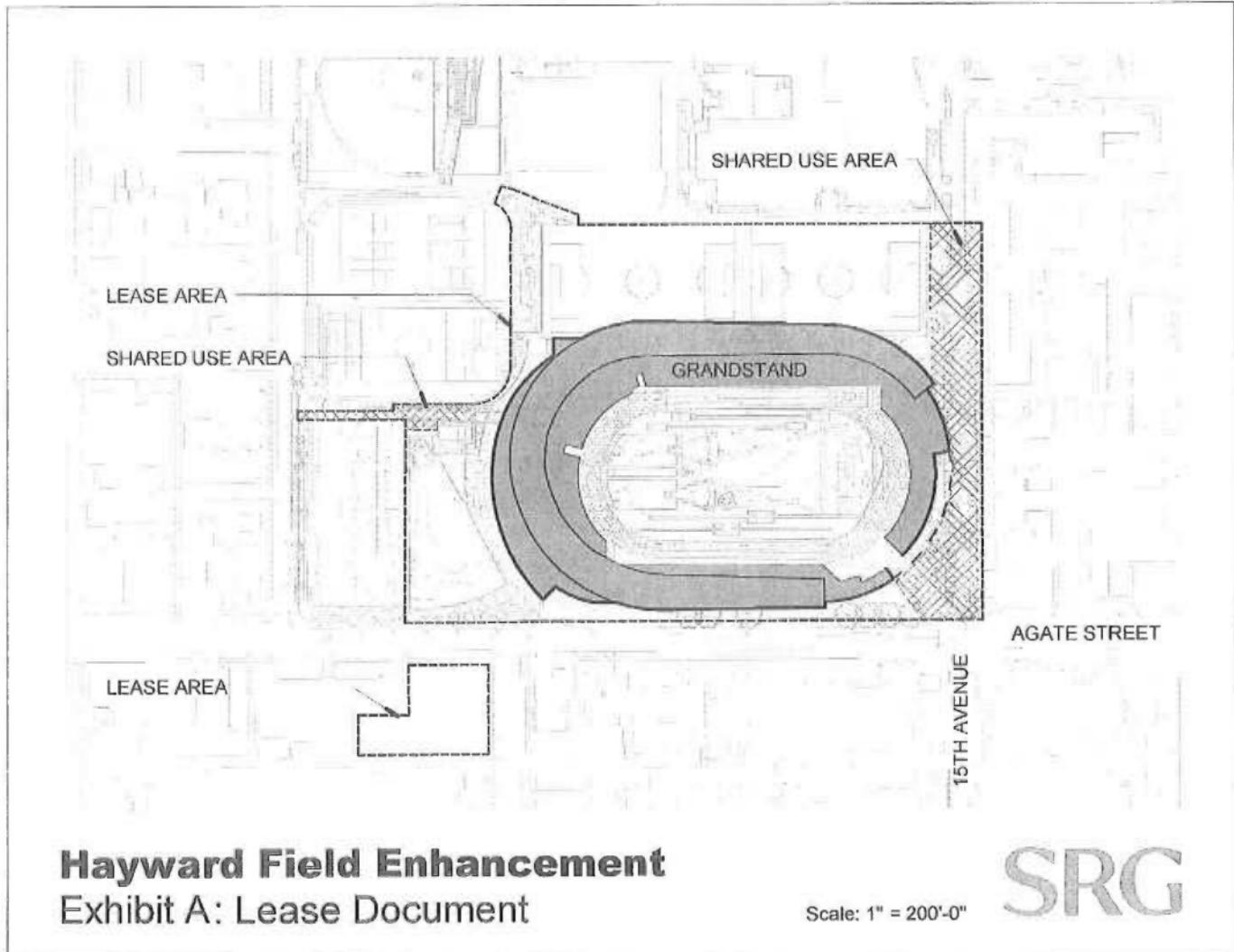


Exhibit B
Prevailing Wage Rate Law Compliance

As more particularly described in this Exhibit B, PHIT will comply with and will require all of PHIT's construction contractors and subcontractors to comply with ORS 279C.800 through 279C.870. The Oregon Bureau of Labor and Industries ("BOLI") prevailing wage rates that will apply to the Project under the Lease (and the construction contract that PHIT will enter into with PHIT's construction contractor) are those that are in effect at the time the construction contract is executed, or if no construction work is authorized to be performed in the initial form of the construction contract, then those prevailing wage rates in effect at the time the construction contractor is under a contractual obligation to perform construction work on the Project. Once established, the prevailing wage rates will then be in effect for the remainder of the Lease and the construction contract between PHIT and PHIT's construction contractor. The prevailing wage rates that will apply will be those set forth in the then current version of the following BOLI booklet, together with any amendments to that booklet: "**PREVAILING WAGE RATES for Public Works Constricts in Oregon.**"

PHIT will pay construction workers at not less than the specified minimum hourly rate of wage, and will include that requirement in all construction contracts and subcontracts pertaining to construction of the Project.

In accordance with ORS 279C.845, every contractor and Subcontractor performing work on the Project will submit written certified statements to the PHIT and UO, on the form prescribed by the Commissioner of BOLI, certifying the hourly rate of wage paid to each worker which PHIT's contractors or subcontractors have employed on the Project, and further certifying that no worker employed on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage. The certificate and statement will be verified by the oath of the contractor or subcontractor that it has read the certified statement, that the contractor or subcontractor knows the contents of the certified statement, and that, to the contractor's or subcontractor's best knowledge and belief, the certified statement is true.

In order to comply with statutory requirements and administrative rules promulgated by the Commissioner of BOLI, the fee required by ORS 279C.825(1) will be paid by PHIT to UO, so the UO can pay the fee to the Commissioner of BOLI.

Exhibit C
UO Undertakings (Liability and Indemnity)

1. THIRD PARTY CONTRACTS. PHIT has already, or will following execution of this Lease, enter into (a) a construction contract with Hoffman Construction Company of Oregon (as extended or otherwise amended from time to time, "**Construction Contract**"); (b) a consultant agreement with Rusty Sprocket, LLC (as extended or otherwise amended from time to time, "**Consultant Contract**"); and, to the extent applicable, (c) any other design services contract or architect's contract in connection with the Project to be undertaken by PHIT during the term of the Lease. All contracts described in this Section 1 are collectively referred to as the "**Contracts**".

2. PROJECT CLOSEOUT. As to Project close-out and transfer of any work at expiration of the Term, PHIT and UO will coordinate closeout of the Project as follows:

- 2.1 UO shall coordinate with PHIT in all Project closeout processes required by this Lease and/or required by the terms and conditions of the Contracts, including without limitation review of any issues associated with the completion of the Project, the date of final completion, the date of substantial completion at the end of the Term, acceptance of the Project, adequacy of any transfer of assignment of warranties and Project documentation, any final pay applications, retainage requests, and back charges and claims.
- 2.2 PHIT may simply follow the recommendations and directives of the UO with respect to such closeout matters.
- 2.3 PHIT and UO will execute a transfer and Assignment and Assumption Agreement for the Improvements upon substantial completion of the Project, upon termination of the Lease, or upon expiration of the Term of the Lease, whichever occurs first, in the form attached as Attachment 1 hereto.
- 2.4 UO will enter into a license with Hoffman and any other contractors, subcontractors, or service providers to the extent necessary to facilitate the completion of punch list work and other close out procedures after the termination or expiration of the Lease.

3. DISCLAIMER OF ALL WARRANTIES BY PHIT ON TRANSFERRED WORK

PHIT makes no warranties or representations of its own to UO regarding (1) any design or other pre-construction services; (2) any construction services/work performed on the Project under this Lease; (3) any design issues associated with design services performed on the Project; or (4) any transferred work product under the Contracts or other contracts or subcontracts related to the Project. PHIT specifically disclaims any and all such warranties. All such services and work shall be transferred to UO AS IS and without recourse to PHIT. UO agrees that any and all warranty rights it may have related to the Project's (1) design services; (2) pre-construction services; and (3) construction services/work shall be solely against third parties, to the extent PHIT has any assigned warranties or independent rights against the designers, consultants, contractors, suppliers,

or other parties performing the Project, including providing materials or services. PHIT assumes no special relationship with respect to any such services. To the greatest extent permitted by law, PHIT and its members shall have no liability to UO for incidental or consequential damages of any nature whatsoever. Except as set forth in Section 4 of this Exhibit, to the greatest extent permitted by law, UO shall, to the fullest extent not prohibited by applicable law, indemnify, defend and hold PHIT, its member, and agents harmless from and against any claims related in any fashion to the Project, including, without limitation, any claims related to the preconstruction work, the work performed under this Lease, and any design claims, unless arising in whole or in part from the negligence, or willful or intentional misconduct of PHIT, its member, managers, officers or employees in performing its obligations under this Lease.

4. ASSIGNMENT AND ASSUMPTION

Upon Lease termination or expiration, unless UO and PHIT agree to the terms of an earlier assignment of the Project, any phase of the Project Improvements, or any of the contracts related to the Project with any required modifications to this Lease, PHIT shall assign to UO (1) the Contracts and any other Project contracts entered into by PHIT; (2) the Project, all Project-related work product, and all third party warranties related to the Project; and (3) all of PHIT's contractual rights, obligations, and liabilities related to the Project, including all obligations and liabilities that predate the assignment. UO shall, if PHIT makes such an assignment, assume all such Contracts and all of PHIT's rights, obligations and liabilities thereunder, including obligations and liabilities which predate the assignment provided. However, at the time of assignment PHIT shall identify and notify UO in writing, by specific reference, each claim asserted in writing against PHIT arising out of the Contracts and the facts related to any such claim known to PHIT at the time of assignment as provided in the Assignment and Assumption Agreement attached hereto as Attachment 1. If PHIT fails to identify with specificity and in writing such claims that are known to PHIT at the time of assignment, all such claims and all costs and expenses arising from such claims ("Claim Costs") will be retained by PHIT. Under no circumstances will the form of assignment include claims of any kind, including Claim Costs, arising from PHIT's negligence or willful or intentional misconduct. Provided, however, at the time of assignment, UO shall identify and notify PHIT in writing by specific reference to each specific claim known to UO that UO is not assuming at the time of the assignment. If UO fails to identify with specificity and in writing such claims at the time of assignment, all such claims will be assumed by UO.

5. HOLD HARMLESS AND INDEMNIFICATION

To the greatest extent permitted by law the UO will, to the fullest extent not prohibited by applicable law, indemnify and hold harmless PHIT and its managers, officers, directors, and PHIT's member, the Foundation, and the officers and directors of Foundation, from and against any and all claims, actions, demands or litigation arising out of the acts or omissions of the UO's officers, employees and agents that relate in any way to the Project.

6. FOUNDATION HOLD HARMLESS

UO will, under no circumstances and under no legal or equitable theories, make any claim under this Lease, in tort or otherwise, against the Foundation, except to the extent any such claims arise

from the negligence, or willful or intentional misconduct of the Foundation. UO acknowledges and agrees that this agreement constitutes a contract solely with PHIT and that Foundation, the sole member of PHIT, shall have no liability whatsoever under the UO's agreement either directly or indirectly as a third-party beneficiary or otherwise.