

Approved by the Board of Directors of the Oregon, California and Eastern Railway Company, on November 21, 1961.

# COMMERCIAL LEASE

This Lease, made and entered into on the 2nd day of October, 1963, by and between the OREGON, CALIFORNIA AND EASTERN RAILWAY COMPANY, a corporation, herein called "Railroad," and N. D. TAVELMAN, an individual, address: 3001 Park Row, Klamath Falls, Oregon,

herein called "Lessee," having the right to lease under this lease.

Witnesseth: That Railroad hereby leases to Lessee the premises of Railroad at or near Klamath Falls, Station, County of Klamath, State of Oregon, shown

enclosed within red lines upon the plat hereto attached, Railroad's Drawing 14009-6, Sheet 10, dated August 2, 1961, for the term of 5 years from the 1st day of October, 1963

upon the following terms and conditions:

1. Railroad reserves for itself, its successors, assigns and licensees, the right to construct, maintain and operate any existing tracks and existing and new or additional pipe, telegraph, telephone and power transmission lines upon, over and beneath the leased premises. Lessee hereby acknowledges the title of Railroad to the leased premises, and agrees never to assail or resist said title.

2. Lessee agrees to pay rental at the rate of \$5.00 Dollars (\$5.00) per acre, payable five years in advance. If such rental is payable on a monthly basis and the effective date hereof is other than the first day of the month, then the rental will be prorated from the effective date to the first day of the following full calendar month.

Any privilege, sales, gross income or other tax (not including income tax) imposed upon the rentals herein provided to be paid by the Lessee, or upon the Railroad in an amount measured by the rentals received by Railroad, shall be paid by the Lessee, in addition to the amounts set forth herein, whether such imposition of tax be by The United States of America, the state in which the leased premises are located, or any subdivision or municipality thereof, or any other authority having jurisdiction over the leased premises.

3. Said premises shall be used by Lessee solely and exclusively for residential yard.

Lessee agrees to comply with all applicable laws and regulations with respect to the use of the leased premises.

If the Lessee does not, within ninety (90) days, commence the use of the leased premises for the purposes herein mentioned, or if the Lessee discontinues such use for a period of ninety (90) days, the Railroad may at its option terminate this lease by giving fifteen (15) days' notice in writing to the Lessee, in which event the provisions of Section 7 hereof, relating to refund of rental, shall apply.

Lessee agrees not to pile or store or permit to be piled or stored upon the leased premises, within 100 feet of the nearest railroad track, any gunpowder, dynamite, gasoline or other explosive substance or material.

4. Lessee agrees to keep the leased premises and all buildings and structures thereon free from rubbish and in a neat and safe condition and satisfactory to Railroad. Lessee shall maintain, at Lessee's sole cost and expense, in good condition and repair, satisfactory to Railroad, all buildings and structures upon said leased premises, except those owned by the Railroad. The leased premises and buildings and structures thereon shall not be used for displaying signs and notices other than those connected with the business of Lessee contemplated by this lease. Such notices and signs shall be neat and properly maintained. Railroad shall have the right to enter the leased premises at reasonable times to inspect the same.

5. Lessee agrees to pay, before they become delinquent, all taxes and assessments against the leased premises, or which might become a lien thereon, by reason of any buildings, structures or other property, real or personal, on the leased premises (except those owned by Railroad), or by reason of Lessee's activities. Railroad may at its option pay such taxes or assessments, and such payments will be repaid by Lessee on demand.

6. In the event Lessee shall not promptly correct any default by Lessee hereunder after receipt of notice of such default from Railroad, Railroad shall have the right to terminate this lease forthwith and to retake possession of the leased premises. No waiver of any default shall not be construed as a waiver of a subsequent or continuing default. Termination of this lease shall not affect any liability by reason of any act, default or occurrence prior to such termination.

7. Either party hereto may terminate this lease upon thirty (30) days' written notice to the other party. In the event of such termination by Railroad, the proportion of rent paid in advance allocable to any period after the termination date shall be refunded to Lessee.

8. Upon the expiration or termination of this lease, or any extension or renewal thereof, Lessee, without further notice, shall deliver up to Railroad the possession of the leased premises. Lessee, if not in default hereunder, shall be entitled, at any time prior to such expiration or termination, to remove from the leased premises any buildings or structures wholly owned by Lessee. Lessee shall restore said leased premises to the condition in which they existed at the time Lessee took possession. Upon the failure or refusal of Lessee to remove from the leased premises all buildings, structures and all personal property owned by Lessee, prior to the expiration or termination of this lease, said buildings, structures and personal property shall thereupon, at the option of Railroad, become the sole property of Railroad, or if Railroad so elects it may remove from the leased premises any buildings, structures and other personal property owned by Lessee, and Railroad may also restore the leased premises to substantially the condition in which they existed at the time Lessee took possession, all at the expense of Lessee, which expense Lessee agrees to pay Railroad upon demand. In the event of such failure or refusal of Lessee to surrender possession of said leased premises, Railroad shall have the right to re-enter upon said leased premises and remove Lessee, or any person, firm or corporation claiming by, through or under Lessee, therefrom.

9. Lessee shall not construct, reconstruct or alter structures of any character upon the leased premises without the prior written consent of Railroad. Lessee shall not commence any repairs (except emergency repairs) until fifteen (15) days after written notice to Railroad.

Lessee further agrees not to install or extend any electrical wires in any Railroad-owned improvements on the leased premises without the prior written consent of Railroad.

10. Lessee agrees to pay for all water, gas, electricity and other utilities used by Lessee on the leased premises.

11. Lessee will fully pay for all materials joined or affixed to the leased premises, and pay in full all persons who perform labor upon the leased premises and will not suffer any mechanics' or materialmen's liens of any kind to be enforced against the leased premises for any work done, or materials furnished, at the Lessee's instance or request. If any such liens are filed thereon, Lessee agrees to remove the same at Lessee's own cost and expense and to pay any judgment which may be entered thereon or thereunder. Should the Lessee fail, neglect or refuse to do so, Railroad shall have the right to pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and the Lessee shall be liable to the Railroad for all costs, damages, and reasonable attorney fees, and any amounts expended in defending any proceedings, or in the payment of any of said liens or any judgment obtained therefor. Railroad may post and maintain upon the leased premises notices of non-responsibility as provided by law.

12. In case the leased premises or any part thereof are in either the State of Arizona or Utah, Lessee will give Railroad and the lessor of Railroad, before allowing any construction, alteration or repair to be done upon the leased premises, a bond satisfactory in form and amount and to be issued by some surety company to be approved by Railroad, conditioned that the Lessee shall pay or cause to be paid all contractors, sub-contractors, laborers, operatives and other persons who may labor or furnish labor, materials or tools in the performance of such construction, alteration or repair.

13. Lessee agrees to release and indemnify Railroad from and against all liability, cost and expense for loss of or damage to property and for injury to or death of persons (including, but not limited to the property and employees of both parties hereto), when arising or resulting from:

- (a) The use of said premises by Lessee's agents, employees or invitees, or
- (b) breach of the provisions of this lease by Lessee

whether or not caused or contributed to by any act or omission of Railroad, its employees, agents, contractors, sub-contractors or their employees or agents, or any other person.

The term "Railroad" as used in this Section 13 shall include the successors, assigns and affiliated companies of Railroad and any other railroad company operating upon Railroad's tracks.

Lessee, upon request, will provide Railroad with certified copies of insurance in form and amounts satisfactory to Railroad, insuring the liability of Lessee under this agreement.

14. In case Railroad shall successfully bring suit to compel performance of, or to recover for breach of, any covenant, agreement or condition herein written, Lessee will pay to Railroad reasonable attorney fees in addition to the amount of judgment and costs.

15. In case Lessee shall (except by Railroad) be lawfully deprived of the possession of the leased premises or any part thereof, Lessee shall notify Railroad in writing, setting forth in full the circumstances in relation thereto, whereupon Railroad may, at its option, either install Lessee in possession of the leased premises, or terminate this lease and refund to Lessee the pro rata amount of the rental for the unexpired term of the lease after the receipt of such notice, whereupon no claims for damages of whatsoever kind or character incurred by Lessee by reason of such dispossession shall be chargeable against Railroad.

16. In case Lessee holds over the term of this lease, with the consent of Railroad, such holding over shall be deemed a tenancy only from month to month, and upon the same terms and conditions as herein stated.