A19379

28506 VOL M61 PAGE 21273 DUPLICATE

Lease covering premises known as _____ (Street Address) N/W corner of South 6th Street and South Fifth Street, City of Klamath Falls, State of Oregon

1. THIS LEASE, made and entered into this 1st day of October, 1968, by and between KERNS BROS. REAL ESTATE, a partnership, composed of James William Kerns, John Paul Kerns and Robert Benjamin Kerns, each having one-third undivided interest, hereinafter called LANDLORD, and THE FIRESTONE TIRE & RUBBER COMPANY, an Ohio Corporation, hereinafter called TENANT, WITNESSETH THAT:

2. DESCRIPTION. LANDLORD hereby leases to TENANT and TENANT hires from LANDLORD the following premises,

A triangular parcel of land at the Northwest corner of South Sixth Street and South Fifth Street, having frontages of approximately 230 feet on South Sixth Street and approximately 290 feet on South Fifth Street, said parcel being outlined in red on Exhibits A&B attached hereto and being legally described as:

The part of vacated Kinlock Street, a part of the West one-quarter of Section 33, and parts of Lots 7, 8, 9 and 10 of Block 106 of Klamath Addition to Linkvale in the City of Klamath Falls, County of Klamath, State of Oregon,

together with all appurtenances, rights and privileges thereto, and all improvements that have been or may be placed thereon, and TENANT is hereby granted the right of ingress and egress to the extent of LANDLORD'S rights over all roads, streets, alleys, sidewalks, and ways, whether public or private, bounding or serving said premises.

3. QUIET POSSESSION. LANDLORD covenants and warrants that LANDLORD has full right and lawful authority to enter into this lease for the full term hereof, and for all extensions herein provided, and that LANDLORD is lawfully seized of the entire premises hereby demised and has good title thereto free and clear of all tenancies, liens and encumbrances, except _____

_____

(and which LANDLORD will have subordinated to this lease if so requested by TENANT). TENANT shall have and enjoy under this lease the quiet and undisturbed possession of the demised premises. LANDLORD covenants that during the term of this lease or any extension thereof he will not engage in the business of buying, selling, or repairing tires, tubes, or batteries within a radius of five hundred (500) feet of the demised premises, nor lease or consent to a lease of other lands in which he has an interest whereon shall be conducted such business within a radius of five hundred (500) feet of demised premises.

4. TERM. This lease shall be for a term of Ten (10) years from and including the first day of the month following completion of the building improvements and remodeling as set forth hereinafter, 19__, and ending on _____, 19__, to be presently used for the purpose of conducting a business for the sale and installation of tires, ~~gasoline~~, oil, and any and all home and automobile supplies and furnishings, toys, gardening and recreational goods, tire repairing, ~~retreading~~, vulcanizing, and for a general automotive service station, for a general retail and wholesale business, and for such other uses as may be necessary or incidental thereto; this shall not be construed to prevent the use of the premises for any other lawful purpose.

5. RENTAL. The rental to be paid by TENANT during the term of this lease shall be Thirteen Thousand Eight Hundred and No/100 Dollars ($13,800.00) per year minimum guarantee, payable in equal monthly installments of $1,150.00 (plus additional contingent rental, if any, as set forth hereinafter) ~~per month~~, payable in advance on the first day of each month of said term to Kerns Bros. Real Estate (Name of party to whom rent check made payable) at 449 Laguna Street (Street or Building), Klamath Falls, Oregon (City and State), or to such other party or at such other place as LANDLORD may from time to time in writing designate. No change in ownership of the premises, or assignment of this lease, or of the rental provided for herein, shall be binding upon TENANT for any purpose until after TENANT has been furnished with evidence, including photostat or certified copy of deed or assignment, showing change in ownership or assignment. No rental shall accrue or become due for any period prior to the time when said premises shall be first opened to the public by TENANT for business, which shall in no event be longer than fifteen (15) days after the date said premises are placed by LANDLORD in a completely clean, tenantable condition, ready for delivery as required by this lease or any supplementary building or alterations agreement. TENANT shall have the right to install its merchandise, goods, fixtures, and equipment during the completion of any construction work and said period of fifteen (15) days. In the event the premises are opened to the public for business by TENANT prior to the commencement date of this lease, TENANT shall pay to LANDLORD a pro rata rent based upon the above monthly rental.

SEE RIDER "A" SEC. 5A

Return to First Federal Savings & Loan
540 Main
Klamath Falls, Oregon 97601

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6. **PERMITS.** TENANT shall have the right to terminate this lease if, within ninety (90) days after execution of this lease by both parties, LANDLORD with TENANT'S help shall have failed to procure any and all such satisfactory permits, modification of any setback lines, licenses, and franchises as may be necessary or desired by TENANT to authorize all automotive work, and the installation and operation of a general automotive service station or store, ~~including the storage and sale of gasoline and oil, and permitting the desired tanks, pumps, and other handling equipment for and on said premises,~~ the parking of cars, tire repairing, ~~retreading, recapping,~~ and vulcanizing, removal or relocation of poles, hydrants, trees, catch basins, etc., as desired by TENANT, and the making of TENANT'S desired curb openings and entrances for the proper operation of a general automotive service station or store.

SEE RIDER "A" SEC. 6A

7. **TITLE.** LANDLORD shall furnish TENANT, at LANDLORD'S expense, when requested by TENANT, a title insurance policy, or LANDLORD'S attorney's opinion suitable to TENANT, extended to show LANDLORD has good and marketable title to said premises as of the date of recording this lease, free of all encumbrances except this lease, and for current taxes and installments of any assessments, and except for any encumbrances which are listed in Section 3 of this lease. If there are any mortgages or trust deeds on demised premises, said attorney's opinion shall show the original amount of the mortgage or trust deed as well as the amount now due. If such title is not good and marketable in LANDLORD, LANDLORD shall, within thirty (30) days, correct the defects which TENANT in writing specifies.

8. **GAS, WATER.** TENANT shall pay the rent or charge imposed for water, sewerage, electric current, and gas used or consumed by it on said premises during the term of TENANT'S occupancy. Any water charge in connection with sprinkler system (if any) shall be paid by LANDLORD.

9. **CONDITION OF PREMISES.** LANDLORD shall deliver premises to TENANT in good condition and warrants that the electrical, plumbing, heating, and air conditioning systems, and fixtures of such systems, (and elevator and sprinkler system, if any), are adequate and in good order and condition, and that the heating facilities are of sufficient capacity to maintain a temperature of 70° Fahrenheit in the offices and merchandise display rooms, and 50° Fahrenheit in the service and storage rooms, under the extreme winter weather. If demised premises are leased primarily for warehouse purposes, LANDLORD warrants that all floors are structurally adequate to sustain a load of 150 pounds of merchandise per square foot.

10. **TAXES AND OBLIGATIONS.** LANDLORD shall pay all taxes, assessments (whether general or special), and any other obligations which are or may become a lien on or levied against the demised premises and improvements as they may become due and payable during the term of TENANT'S occupancy thereof, and make all payments required to be made under the terms of any mortgage or deed of trust which may at any time be a lien on the premises. TENANT shall pay all taxes on its merchandise, trade fixtures, and equipment.

SEE RIDER "A" SEC. 10A

11. **INSURANCE.** LANDLORD shall, at all times during TENANT'S occupancy, keep the improvements on said premises insured against fire and extended coverage to the extent of the full insurable value thereof, including all improvements, alterations, and additions which may be made, and all moneys collected from such insurance shall be used toward full compliance of the obligations of LANDLORD assumed under Section 15 hereof. Duplicate of such insurance policy(ies), prepared by insurance company, shall be furnished TENANT by LANDLORD if requested by TENANT. In further consideration of the rental payments to be made by TENANT, LANDLORD covenants that TENANT shall not be liable for damage to or destruction of LANDLORD'S property by any fire or other casualty from any cause whatsoever.

12. **SIGNS.** TENANT may erect such signs on or about the premises or the improvements thereon as shall conform with City ordinances.

13. **ORDINANCES.** In the event any public authority shall require correction of violations of any statute, ordinance, regulation, or building code, corrections shall be made by LANDLORD at LANDLORD'S expense except as to such violations arising from alterations or additions made by TENANT, in which event TENANT'S violations shall be corrected by TENANT at TENANT'S expense. TENANT shall comply with all ordinances and regulations of government authorities relating to keeping the premises in an orderly condition and relating to the method of conducting TENANT'S business thereon.

14. **SUBLETTING, ASSIGNING.** TENANT may assign this lease or sublet all or part of said premises without LANDLORD'S permission, but TENANT shall not thereby be relieved of the obligations imposed upon it under this lease, and TENANT shall continue making the monthly rental payments to LANDLORD.

15. **DAMAGE.** In case the premises shall be so damaged by fire, earthquake, the elements, or any other casualty as to be untenantable, TENANT may terminate this lease, and any rents paid by TENANT in advance shall be refunded. If TENANT elects not to terminate, or in any case in which said premises are damaged and not rendered untenantable, TENANT shall remain in possession under the terms of this lease, in which case it may serve written demand upon LANDLORD for the repair or restoration of demised premises by LANDLORD, and LANDLORD agrees forthwith to make such repairs and restorations as to restore the premises to their former state. If LANDLORD shall fail to begin repair or restoration within ten (10) days after such demand, or to complete such repairs or restorations with reasonable promptness, then TENANT may elect to surrender said premises to LANDLORD, whereupon this lease shall terminate, or TENANT may make such repairs and restorations as TENANT deems necessary, at the expense of LANDLORD. In any case in which the premises are damaged and TENANT retains possession, rents from the date of commencement of the damage to the time of completion of repairs and restorations shall be reduced pro rata to the extent that the premises have been untenantable.

16. **ALTERATIONS.** TENANT may from time to time make, at its expense, alterations or additions, structural or otherwise, to the then existing improvements or any parts thereof as may be, in TENANT'S opinion, reasonably necessary or desirable for the conduct, improvement or expansion of TENANT'S business, provided the alterations do not diminish the value of the then existing improvements. Relocation or removal of partitions shall not be deemed to affect such value.

17. **DEFAULT.** If default be made by either party in any of the covenants herein and not rectified (or rectification not started and pursued with reasonable dispatch) by the defaulting party within fifteen (15) days after receipt of written notice from the other party, then this lease shall at the option of the party not in default forthwith cease and terminate. However, if party not in default intends to terminate this lease if said default is not so rectified, a statement to that effect shall be contained in said notice, and the party not in default shall not have the right to terminate this lease unless the notice contains such statement. If such statement is not contained in the first or any subsequent notice, party not in default retains the right to give a later notice containing such statement. If such default is committed by LANDLORD and not so rectified, TENANT at its option may instead take necessary steps to rectify the default at LANDLORD'S expense, and apply accruing rentals to reimburse itself for its expenditure therefor, together with interest at the rate of six per cent (6%) per annum. If such default is committed by TENANT and not so rectified, LANDLORD may, by summary dispossess proceedings, reenter said premises, take possession of the same, and expel TENANT or any party occupying said premises, and so to possess and enjoy the said premises. Should said term at any time be ended by such election of LANDLORD, TENANT shall surrender said premises peaceably to LANDLORD immediately upon such termination of said term. In addition to the above remedies, the party not in default shall also have the benefit of any applicable legal remedy.

18. **WAIVER.** Failure of either party to insist upon strict performance of any covenant or condition of this lease in any one or more instances shall not be construed as a waiver for the future of any such covenant or condition, but the same shall be and remain in full force and effect.

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21275

RIDER "A"

To be attached to and become a part of that certain lease dated October 1, 1968, under the terms of which THE FIRESTONE TIRE & RUBBER COMPANY leases certain property in the City of Klamath Falls, County of Klamath, State of Oregon, from KERNS BROS. REAL ESTATE.

5A. CONTINGENT RENTAL. In addition to the monthly rental payments hereinabove provided for in this lease, TENANT agrees to pay to LANDLORD the following contingent rental payments based upon net retail, net commercial, and net wholesale sales:

Said contingent rental shall be that sum by which three and one-half percent (3½%) of annual "net retail sales," one percent (1%) of annual "net commercial sales," and one percent (1%) of annual "net wholesale sales" exceed the sum of the following amounts:

1. Minimum guarantee paid annually under Section 5 of this lease.
2. Contingent taxes paid pursuant to Section 10A of this lease.

The term "net retail sales" as used in this lease shall include all retail sales and service for cash or credit rendered to the public by the store operating on demised premises, but not including sales to dealers or net commercial sales.

The term "net commercial sales" as used in this lease shall include all sales and service for cash or credit rendered to fleet operators or any business firm operating cars and trucks for commercial purposes by the store operating on demised premises.

The term "net wholesale sales" shall include all wholesale sales and service to dealers for cash or credit rendered by the store operating on demised premises, subject to earned

bonus and other quantity discounts.

There shall be deducted from all said sales, price, credit, and merchandise adjustments, including goods sold on approval and later returned or repossessed, uncollectible accounts, excise tax, and any tax based upon or measured by said sales or receipts from sales made by TENANT which is added to or made a part of the purchase price, whether included in billing price or stated separately. Sales and service to mileage accounts, national commercial accounts, federal, state, county or city governments, or any other governmental body or agencies thereof, and other stores of TENANT shall not be included in net retail sales, net commercial sales, or net wholesale sales.

TENANT will, not later than two (2) months after each lease year, furnish LANDLORD with a statement of the business conducted during the next preceding lease year by the store operating on the leased premises. With said statement TENANT shall forward payment of said additional rent (if any) for said next preceding lease year computed as above provided. TENANT further agrees that it will at all times during the term of this lease keep accurate and correct books showing the business conducted upon the leased premises and said books shall be open and available for examination by LANDLORD at reasonable times and intervals.

It is understood and agreed by LANDLORD that TENANT has made no representation of any kind as to minimum or maximum annual volume of retail, commercial, and wholesale sales which TENANT may or shall make any lease year during the term of this lease. LANDLORD agrees not to divulge to any person or persons, firm or corporation, the amount of net retail, net commercial and net wholesale sales made by TENANT on said leased premises.

6A. PERMITS. The permits, licenses and franchises referred to in Section 6 hereof shall be obtained prior to the commencement of construction of the building and improvements called for in Section 37 hereof, and shall include all permits required for the construction of the building as provided for hereinafter, upon plans and specifications satisfactory to TENANT, and shall include any changes or variances in the zoning required in order to permit on the premises a business such as is carried on in other similar FIRESTONE sales and service stores, as is specified in Section 4 hereof, including a general automotive service station for complete automotive repairs and service, including wheel aligning, brake work, ignition and muffler work, but not including any body repairs, painting, or major engine repairs, and permitting parking on all land areas as desired by TENANT, and permitting TENANT to erect on or about said premises signs, electrical and other kinds, as TENANT may desire for proper identification and advertising of its business.

10A. TAXES. In addition to the rental provided for herein, TENANT agrees during the term of this lease, or its renewal, upon receipt of written notice from LANDLORD, together with paid tax bills or photostatic copies thereof, to reimburse LANDLORD for any increase in the general real estate taxes levied against the land and improvements on the demised premises in excess of the general real estate taxes which are paid on the demised premises for the first tax year in which the remodeled building on demised premises (pursuant to Section 37 of this lease) is completely assessed and included on the tax rolls for computation of taxes. LANDLORD agrees to supply TENANT with paid tax bills or photostatic copies thereof for the base year real estate taxes upon which the excess is computed prior to or at the time of LANDLORD'S first

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request for reimbursement of such excess taxes. LANDLORD agrees to submit said notice and paid tax bills within six (6) months after payment of such taxes by LANDLORD, and LANDLORD'S failure to submit to TENANT such request for reimbursement within said period of six (6) months shall nullify LANDLORD'S right to collect from TENANT any excess taxes for that particular year.

Any reimbursement by TENANT shall be the net amount of the tax after any discounts which could be taken, and without including any penalties whether or not LANDLORD takes the discounts or pays penalties.

If the general real estate taxes are excessive, in LANDLORD'S opinion or in the opinion of TENANT, LANDLORD, on his own initiative or at TENANT'S request, shall contest the same and make a reasonable effort to have them reduced before making the next payment.

TENANT'S reimbursement of any tax increase for the (first and) last years of TENANT'S occupancy shall be apportioned or prorated dependent upon the number of months in the lease term which are included in the period covered by the tax payment.

In the event LANDLORD is not able to furnish TENANT with a separate tax bill of the demised premises because of the fact that the demised premises are included for assessment purposes with a building or group of buildings located on land of which the demised premises are only a part, then the formula for computing TENANT'S share of excess taxes shall be based on the portion of the total tax bill that the land and building areas of the demised premises bears to the total land and building areas covered by the applicable tax bill. Any tax increase after the base tax

year due to building additions or alterations outside of the demised premises shall be excluded before applying the formula for TENANT'S share.

20. REPAIRS. LANDLORD reserves the right to enter the demised premises for the purpose of inspecting same at all reasonable times, and shall be responsible for and keep all parts of the roof, exterior and structural parts of the premises in good, safe, tenantable condition, sightly in appearance and in good order and repair. LANDLORD will perform any major repair or replacement (costing $300 or more) which may be necessary on the interior of the premises because of ordinary wear, tear and depreciation, and which is not necessitated by TENANT'S negligence or abuse. LANDLORD shall be liable for any loss or damage to TENANT'S property sustained by TENANT resulting from the failure of LANDLORD to make any repairs as required in this paragraph provided LANDLORD has had reasonable time to make such repairs after receipt of written notice from TENANT. TENANT shall perform all minor interior repairs (costing less than $300) and shall make any repairs necessary because of any negligent act or omission or abuse by TENANT, its agents, employees and customers except for the hazards covered in Section 15 hereof. Neither LANDLORD nor TENANT shall be required to do any interior painting but TENANT shall do any interior painting which TENANT desires.

37. BUILDING. The premises shall not be ready for delivery as provided in Section 5 hereof, until LANDLORD has substantially completed the construction of the building provided for hereinafter. Substantially completed shall mean completed to the extent that TENANT can occupy the building and operate its business thereon with the minor remaining work items such that it can be completed by LANDLORD'S contractor without unreasonably interfering with TENANT'S occupancy.

*TENANT agrees to repair or replace any broken glass not damaged by fire or windstorm or by causes not covered by LANDLORD'S insurance or not damaged due to structural failures of the building. 58

LANDLORD shall complete any such remaining work as quickly as reasonably possible thereafter.

LANDLORD shall, as soon as reasonably possible, remodel the building on demised premises and erect certain improvements to provide TENANT with a sales and service building in accordance with TENANT'S Plan No. 739-67, prints of which are attached to each copy hereof and marked Exhibit "B". LANDLORD has furnished to TENANT copy of specifications prepared by Brosterhous Construction Company which are referred to on above-mentioned Exhibit "B" and they are incorporated herein to the same effect as if they were attached hereto for the purpose as stated on said Exhibit "B".

TENANT has furnished LANDLORD with a set of Firestone plans, Job No. 1227, Sheets A-1 through A-9, which plans shall be used by LANDLORD as a guide for installation of TENANT'S hoists, wheel aligner and compressors, and as a guide for installation of suitable lighting fixtures in the sales, service and storage areas. TENANT shall furnish LANDLORD with "store planning layout drawings" of sales, service and storage areas and these "store planning layouts" shall be used by LANDLORD as a guide for proper location of TENANT'S equipment and fixtures. TENANT shall also furnish LANDLORD with a detailed drawing of TENANT'S standard suspended tire racks and catwalk and this drawing shall be used by LANDLORD to insure that proper tire racks and catwalks will be furnished and installed by LANDLORD at the rear of the service department as shown on Exhibit "B".

It is understood that said Exhibit "B" and plans and specifications referred to thereon, shows the basic requirements of TENANT and that the building shall be constructed complete and ready for TENANT'S occupancy in all respects and in accordance with good construction practices, and that

good materials, workmanship, and design shall be used, and that the building shall be in accordance with all rules, regulations, codes, and zoning ordinances having jurisdiction. LANDLORD shall obtain all permits, approvals, licenses, franchises, changes or variations of zoning, modification of any setback lines, as referred to in Sections 6 and 6A hereof, and as may be required to permit the construction of all improvements, including signs, driveways, and curb openings, as stipulated on said plans and zoning permits necessary to permit the operation by TENANT of the business stated in Section 4 of this lease. LANDLORD shall not be required to obtain or defray the cost of sign permits or any general licenses for the conduct of TENANT'S type of business. LANDLORD warrants that such licenses, if necessary for the conduct of TENANT'S business, and sign permits, shall be available to TENANT; otherwise, TENANT may cancel this lease.

LANDLORD shall submit to TENANT for TENANT'S approval, a drawing showing the proposed floor and concourse elevations and contour lines, and agrees to conform to TENANT'S reasonable suggestions, so that the grades of the floors and concourse will be the most suitable for TENANT'S use. This grade and contour plan shall also show the grades and contours of the adjoining driveways and parking lot. As quickly as TENANT notifies LANDLORD of TENANT'S approval of said elevation drawing, LANDLORD shall proceed with the remodeling of the building and complete it as soon as reasonably possible.

LANDLORD warrants that demised premises will be ready for delivery not later than ~~December 31, 1968~~ Feb 28, 1969, unless LANDLORD'S failure so to complete is due to causes beyond the reasonable control of LANDLORD (such as governmental restrictions, strikes, shortages of material or labor, etc.) in which event the

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aforesaid date shall be adjusted to the extent that such causes have delayed construction. If LANDLORD shall not have completed construction by the aforesaid date, adjusted as hereinabove provided, TENANT shall have the right to cancel this lease at any time within six (6) months thereafter by giving written notice of such cancellation within such time to LANDLORD, such right of cancellation to be the sole and exclusive remedy available to TENANT in the event of LANDLORD'S failure so to complete construction within the time specified, unless due to lack of due diligence or bad faith on the part of LANDLORD.

TENANT may inspect the work from time to time during the construction and upon completion, and if TENANT notifies LANDLORD that the plans and specifications are not being, or have not been, followed by the contractor, LANDLORD shall see that the necessary changes or revisions are made so that the completed building conforms to the approved plans, specifications and contract, except those changes which have been approved by TENANT in writing.

The construction contract shall contain a covenant reading as follows:

"CONTRACTOR'S WARRANTY. Contractor will be responsible for the execution of a satisfactory and complete piece of work in accordance with the detailed drawings and specifications. Contractor shall provide proper and safe means for inspection of the work by owner who shall have the right to reject all work or material not in accordance with the detailed drawings and specifications, whether incorporated in the work or not. Contractor shall remove such rejected work or material and replace the same with work or material satisfactory to the owner promptly upon notice from owner. Further, contractor shall promptly replace

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any defective workmanship and material that may develop within one (1) year from date of completion of contract and repair any and all damage caused thereby, all at contractor's expense and according to instructions of owner. If the owner deems it inexpedient to correct work injured or not done in accordance with the contract, an equitable adjustment from the contract price or refund to the owner shall be made. The date of final completion shall be agreed upon in writing in order to establish commencement of this guarantee period."

LANDLORD agrees to use every practicable means to enforce against contractor or suppliers of materials any request of TENANT arising out of their failure to comply with the provisions of the plans, specifications and contract.

38. COMMENCEMENT DATE OF LEASE. In order to establish the commencement date of this lease, as hereinabove referred to, LANDLORD and TENANT shall enter into a supplemental agreement immediately upon completion of construction establishing the commencement date of the primary lease term, as set forth in Section 4 herein, and the options to renew this lease, as provided for hereinafter. It is understood that none of the terms of this lease shall be changed by said supplemental agreement and that its sole purpose shall be to establish the commencement date of the lease term and of the option terms.

39. STREET IMPROVEMENTS. It is understood by LANDLORD and TENANT that the City of Klamath Falls is presently constructing improvements to South Fifth Street, said improvements to be substantially as shown on Exhibit "B".

LANDLORD agrees that, in the event the improvements to

Fifth Street are not completed at the time TENANT opens the demised premises for business, the monthly guaranteed rental to be paid to LANDLORD by TENANT shall be reduced to Nine Hundred and No/100 Dollars ($900.00) per month until such time as the said street improvements are completed.

40. INDEMNITY. TENANT agrees that it will indemnify and save LANDLORD harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments resulting from injury to person or property of others on the demised premises which arise out of any act of TENANT or TENANT'S failure to act in connection with TENANT'S use of the premises, or negligence of TENANT, its agent or employees. LANDLORD agrees that in case any claim is asserted or any action brought to recover any such damage, LANDLORD will give immediate notice thereof in writing to TENANT and will cooperate in every way in the investigation and defense of any such claim or action, and that the handling and settlement of any such action shall be performed and concluded by TENANT.

21285

6th

1

2

10

8

7

LEASED PREMISES

154.74 calc.

106 ± Appx.

20± Appx.

290' Appx.

Original Const.

Vacated 7th

Fd. 1½" I.P.

W¼, Sec. 33

290' Appx.

30'

30'

54.46 calc.

Lc 114.03

19.63

2.81

S 70° 37' 30" W

176.65 calc.

55.17 calc.

N 19° 22' 30" W Recorded

N 19° 22' 30" W

172.76

S 70° 37' 30" E Recorded

S 70° 37' 30" E

174.05

S 19° 22' 30" E Recorded

S 19° 22' 30" E

RETAIL BUILDING

N 31° 22' 30" W recorded

N 31° 22' 30" W

116.99

REST SERVICE SHOP

P 1126

Fd. 1" I.P.

P 1126

SPRR

NORTH

KLAMATH FALLS, OREGON

EXHIBIT "A"

N 11° 22' 30" W Rad

S 10° 22' W

SPRR

CMRR

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R

19. **INTERFERENCE.** Should an adjudication of a competent court or regulation of any government authority prohibit TENANT from establishing its business on said premises, or order TENANT to discontinue, in whole or in part, its business thereon, then TENANT may terminate this lease, unless such order results from willful negligence of TENANT in its use of the premises.

20. **REPAIRS.** ~~LANDLORD may enter the premises to inspect same at all reasonable times and intervals, and shall be~~ responsible for and keep all parts of said premises, and adjoining sidewalks, the appurtenances thereto, and the building on the demised premises with its appurtenances, in good, safe, tenantable condition, sightly in appearance, and in good order and repair. LANDLORD shall be liable for any loss or damage to TENANT'S property sustained by TENANT resulting from the failure of LANDLORD to make any of said repairs, provided LANDLORD has had reasonable time to make such repairs after receipt of written notice from TENANT. Once every ~~three (3) years LANDLORD shall paint the exterior and interior of improvements on demised premises.~~

SEE RIDER "A" SEC. 20

21. **CONDEMNATION.** If, during TENANT'S occupancy, any part of said premises be condemned for public use under right of eminent domain, and if the remainder of the premises, ~~in TENANT'S opinion,~~ is not suitable for its purposes, TENANT may at its option terminate this lease, but if it shall not elect so to do, LANDLORD shall restore and rebuild the demised premises to provide TENANT, as far as possible, all the improvements and building facilities existing before the taking, and the monthly rental thereafter to be paid shall be reduced by an amount which bears the same ratio to that herein provided for as the amount of damages awarded (in excess of allowance for building revisions) bears to the total value prior to such taking. In any such proceeding whereby all or a part of said premises are taken, whether or not TENANT elects to terminate this lease, each party shall be free to make claim against the condemning party for the amount of the actual provable damage done to each of them by such proceeding. In the event streets, alleys, or sidewalks abutting the premises are changed in any manner whatsoever by condemnation or otherwise, by City, State, or any public authority, in such manner as to injure ~~in TENANT'S opinion~~, the ingress and egress of vehicular ~~or pedestrian~~ traffic to the premises, TENANT may cancel this lease.

Reasonably

permanently and materially

22. **FIXTURES.** TENANT may, upon vacating the premises, or at any time during the continuance of its tenancy, remove all shelving and fixtures, equipment, or other personal property of TENANT, improvements or building appurtenances, which it may have installed or placed at its own expense on said premises, or otherwise acquired. TENANT shall repair any damage to premises caused by such removal.

23. **RENEWAL.** TENANT shall have the right to renew or extend the within lease for a period of Five (5) years, following the expiration of the original term hereof, ~~and beginning on the first day of ..... 19.....~~ at a rental of at the same rental ~~per month~~, and under the same terms and conditions as for the original term as set out herein. In the event TENANT exercises this option to renew or extend, written notice thereof shall be given LANDLORD at least thirty (30) days prior to the commencement of such renewal or extension period.

24. **RENEWAL.** TENANT shall have the right to renew or extend the within lease for a period of Five (5) years, following the expiration of the renewed or extended term provided for in Section 23 hereof, and beginning ~~on the first day of ..... 19....., at a rental of~~ at the same rental ~~per month~~, and under the same terms and conditions as for the original term as set out herein. In the event TENANT exercises this option to renew or extend, written notice thereof shall be given LANDLORD at least thirty (30) days prior to the commencement of such renewal or extension period.

25. ~~**RENEWAL.** TENANT shall have the right to renew or extend the within lease for a period of ..... years, following the expiration of the renewed or extended term provided for in Section 24 hereof, and beginning on the first day of ..... 19....., at a rental of ..... per month, and under the same terms and conditions as for the original term as set out herein. In the event TENANT exercises this option to renew or extend, written notice thereof shall be given LANDLORD at least thirty (30) days prior to the commencement of such renewal or extension period.~~

26. **FIRST REFUSAL TO PURCHASE.** During TENANT'S occupancy under this lease, or any extension or renewal thereof, TENANT shall have first refusal option to purchase the demised premises only, upon the same terms and conditions as contained in any valid, acceptable, bona fide offer LANDLORD, or LANDLORD'S successors, may receive. LANDLORD shall promptly send to TENANT a copy of such offer or communicate the complete details of such offer to TENANT in writing signed by LANDLORD. TENANT shall have ten (10) days after receipt from LANDLORD of the copy or complete details of such offer within which time to exercise said option to purchase. If TENANT exercises such option, LANDLORD shall deliver to TENANT current title insurance policy, or title certificate, or abstract of title brought down to date satisfactory to TENANT and showing title to be merchantable, free and clear of all liens, easements, and encumbrances, except such as are approved as part of said offer to purchase, and transfer of title by LANDLORD to TENANT shall be effected by warranty deed conveying such merchantable title. Irrespective of said purchase offer, TENANT shall not be obligated to give back or assume any mortgage or trust deed, but instead shall have the right to pay the entire purchase price in cash.

27. **FIRST REFUSAL TO LEASE.** During TENANT'S occupancy under this lease, or its renewal or extension, TENANT shall have first refusal option to lease the demised premises only for an additional term upon the same terms and conditions as contained in any valid, acceptable, bona fide lease offer LANDLORD, or any subsequent LANDLORD, may receive. TENANT shall have fifteen (15) days after receipt from LANDLORD of written notice of such offer (with certified full written statement of such offer or certified copy thereof) within which time to exercise said option and accept any such lease.

28. **HOLDING OVER.** LANDLORD shall give TENANT at least thirty (30) days' prior written notice if LANDLORD shall expect or demand that TENANT vacate the premises upon the expiration of this lease or any renewal thereof. If TENANT should continue to occupy the premises without having exercised its option to renew (if any) or without an agreement in writing as to the terms of such continued possession (even though such continued occupancy would extend the tenancy into a renewal period), then such additional tenancy shall be on a month-to-month basis at the same rental and under the same terms and conditions as provided in this lease or last renewal thereof. In case of such continued possession, the month-to-month tenancy created thereby may be canceled at the end of any calendar month by not less than sixty (60) days' prior written notice from either party.

~~29. **CHAIN STORE TAX.** TENANT shall pay any and all chain store taxes imposed upon the operation of a place of business on the premises under existing or present laws, regulations and rulings. If the total amount of such taxes should at any time exceed by more than Three Hundred Dollars ($300.00) per year the present total amount thereof, and LANDLORD declines to pay or reimburse TENANT for such portion thereof in excess of such Three Hundred Dollar ($300.00) increase, TENANT may at its election assume the burden thereof or cancel this lease upon thirty (30) days' written notice.~~

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30. **NOTICES.** Any notice to LANDLORD provided for herein shall be deemed to have been served only when such notice in writing addressed to LANDLORD, or to the party to whom rent was last paid, has been deposited in a U. S. Post Office by registered mail addressed to the place where the rent shall have last been accepted prior to such notice. Any notice to TENANT as provided for herein shall be deemed to have been served only when in writing and when delivered by registered mail to The Firestone Tire & Rubber Company, ~~2525 Firestone Boulevard, Los Angeles, California 90054, Attention: Real Estate Department.~~ Any notice to TENANT delivered to any other department, office, or city shall be of no force and effect. P. O. Box 60382, Terminal Annex, Los Angeles, California 90060, Attention: Real Estate Department.

31. **CAPTIONS.** The captions appearing at the beginning of each of the sections of this lease are for reference only and are not to be considered a part of this lease.

32. **TIME.** It is expressly stipulated that time shall be of the essence of this lease.

33. **BINDING ON HEIRS, ETC.** This lease shall be binding upon the heirs, devisees, executors, administrators, successors in interest, and assigns of parties hereto.

34. **MODIFICATION.** This contract constitutes the whole agreement between the parties. There are no terms, obligations, covenants, or conditions other than contained herein. No modification or variation thereof shall be deemed valid unless evidenced by an agreement in writing.

35. **INTERPRETATION OF WORD "LANDLORD."** The term "LANDLORD" as used in this lease shall be interpreted so as to include all of the LANDLORDS named in the first section hereof, whether the parties named in said section are corporations or individuals, and if individuals, whether male or female. If more than one party is named in said section, the obligations of said parties herein contained shall be joint and several obligations.

36. **EXECUTION.** This lease has been prepared and is submitted to LANDLORD for signature with the understanding that it shall not bind TENANT until duly executed by both parties and delivery made to LANDLORD. In consideration of One Dollar ($1.00) and other good and valuable consideration received by LANDLORD to its full satisfaction, TENANT is hereby extended thirty (30) days after execution by LANDLORD within which time to accept the terms of and execute this lease.

SEE RIDER "A" SECTIONS 37, 38, 39, 40

IN WITNESS WHEREOF, LANDLORD has caused its name to be hereunto subscribed and its seal to be hereunto affixed, and TENANT has caused its corporate name to be hereunto subscribed by its duly authorized officers on the day and year first above written.

WITNESSES AS TO LANDLORD:

KERNS BROS. REAL ESTATE

James William Kerns (L.S.)

John Paul Kerns (L.S.)

Robert Benjamin Kerns (L.S.)
LANDLORD

WITNESSES AS TO TENANT:
Peggy L Fitzgerald
Marianna Trapell

APPROVED AS TO FORM / SUBSTANCE / POLICY

THE FIRESTONE TIRE & RUBBER COMPANY

BY R P Beasley
Executive Vice President

Attest: H L Hunt
Assistant Secretary

STATE OF OREGON)
) ss.
COUNTY OF KLAMATH)

This is to certify that on this 14th day of October, 1968, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn as such, personally appeared James William Kerns, John Paul Kerns and Robert Benjamin Kerns, known to me to be the persons whose names are subscribed to the foregoing instrument, and known to me to be the partners of KERNS BROS. REAL ESTATE, and acknowledged to me that they executed said instrument for the purposes and consideration therein expressed, and as the act of said partners.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first hereinabove written.

Notary Public
In and for said State and County

My commission expires:

1-10-71

STATE OF OHIO)
) ss.
COUNTY OF SUMMIT)

Before me, the undersigned Notary Public in and for said State and County, on this 6th day of November 1968, personally appeared R.P. Beasley and H.L. Hunt to me known to be the ~~Executive~~ Vice President and Assistant Secretary, respectively, of The Firestone Tire & Rubber Company, and to be the identical persons who signed, and severally acknowledged that they signed, the foregoing instrument as such officers of said Corporation for and in behalf of said Corporation, and that they executed the same as their free and voluntary act and deed and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my signature and affixed my official seal on the day and year aforesaid.

JOHN W. BRAY, Notary Public
My Commission Expires Aug. 28, 1969

My commission expires:

Notary Public, Summit County, Ohio

Form S-273-Rev.-11-07-250-Coast

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STATE OF OREGON, } ss
County of Klamath }

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Filed for record at request of

Klamath County Title

on this 31 day of December A. D. 19 68

at 4:30 o'clock P. M., and duly

recorded in Vol. M 68 of Deeds

Page 21273.

DOROTHY RODGERS, County Clerk

By Phyllis Lacey Deputy

Fee $2.00

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