

9730

DESCRIPTION
(continued)

RESERVING from the above described PARCEL I a non-exclusive easement for road and utility purposes described as follows:

Beginning at the northwesterly corner of Exception (a) described above and running thence along the westerly line thereof and the southerly extension thereof:

- (1) South 00° 27' 05" East, 156.0 feet; thence parallel with the south line of Bristol Avenue.
- (2) South 89° 32' 55" West, 50.0 feet; thence parallel with the west line of THE MEADOWS referred to above.
- (3) North 00° 27' 05" West, 156.0 feet to the northeast corner of exception (b) described above on the south line of Bristol Avenue (at 11.0 feet intersect the southeast corner of exception (b) described above); thence along the south line of Bristol Avenue.
- (4) North 89° 32' 55" East, 50.0 feet to the point of beginning.

ALSO RESERVING from the above described PARCEL I a non-exclusive easement for driveway purposes, 7 feet wide, lying along, adjacent to and southerly of the southerly line of exception (a) described above and 11 feet wide lying along, adjacent to and southerly of the southerly line of exception (b) described above.

PARCEL II:

A non-exclusive easement for driveway purposes, 12 feet wide, lying along, adjacent to and northerly of the southerly lines of the exceptions described in (a) and (b) above.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of MOUNTAIN TITLE CO

this 28th day of June A. D. 1976 at 1:23 P. M., and

duly recorded in Vol. M 76, of MORTGAGES on Page 9727.

FEE \$ 9.00

Wm. D. MILNE, County Clerk

By *[Signature]*

15590

Vol. 76

9731

LEASE OF LAND

This indenture of lease, made and entered into this twenty-fifth day of June, 1976, by and between Bill Dicky, hereinafter called the Lessor, and Erskine DeLoe, hereinafter called the Lessee.

WITNESSETH: In consideration of the covenants, agreements, and stipulations herein contained on the part of the Lessee to be paid, kept, faithfully performed, the Lessor does hereby lease, devise, and let unto said Lessee that certain land, as is situated in the City of Klamath Falls, County of Klamath and State of Oregon, known and described as follows:

Beginning at a point two hundred and forty-eight feet from the southwesternmost corner of the parking lot of the Shopping Center for Oregon Foods, Inc. along a compass line S 30°39' W for fifty-two feet and then along a compass line S 89°37'15" E for one hundred and ten and thirty-two hundredths feet and then southeast and then east to form a parallelogram with opposite sides parallel and equal, the northern and southern boundaries of this land being each one hundred and ten and thirty-two hundredths feet long and the eastern and western boundaries of this land being each fifty-two feet long.

The above-described land is outlined on the parking plan map of the Shopping Center for Oregon Foods, Inc., which map is attached hereto and incorporated herein by this reference.

To have and to hold the said described land unto the said Lessee for a period of time commencing with the first day of the first complete month following issuance of the occupancy permit by the City of Klamath Falls Building Department for the building Lessee intends to build upon the land, hereinafter referred to as occupancy date; and ending at midnight on the last day of the month twenty-five years after the occupancy date, at and for a rental of Three Hundred Dollars (\$300) each month for the said term payable in lawful money of the United States on the first day of each month for the said term.

In consideration of the leasing of said land and of the mutual agreements herein contained, each party herto does hereby expressly covenant and agree to and with the other as follows:

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I.

That the Lessee may build, place or construct any structure or building upon the said land which conforms to the City of Klamath Falls and County of Klamath building codes and requirements.

II.

That the Lessee may sublet, convey, sell or otherwise dispose of any and all interests he may have or acquire in this lease, or in any building or structure upon said land or in the land itself.

III.

That the Lessee has the option and right to renew this lease, upon the same terms and agreements on or before the last day of the month twenty-five years after the occupancy, for a period of ten (10) years until the last day of the month thirty-five years from the occupancy date.

IV.

That the Lessor will provide sufficient parking in the parking lot adjacent to the North and East boundaries of said land to satisfy any City of Klamath Falls and County of Klamath building code and requirements to allow, facilitate and permit the Lessee to place, construct or build any building or structure he desires upon said land.

V.

That any building or structure placed, built or constructed upon said land will become the sole and exclusive property of the Lessor on the last day of the month twenty-five years from date of occupancy, unless the Lessee exercises his ten (10) year renewal rights under this lease; and, in that case any building or structure placed, built or constructed upon said land will become the sole and exclusive property of the Lessor on the last day of the month thirty-five years from the date of occupancy.

VI.

That every five (5) years from the occupancy date, the monthly rental will be reviewed, and renegotiated, and will be increased to reflect any increase in the appraised value of the land in the following manner:

The value of the land, not including any building or structure thereon, on or before the last day of the month five years from occupancy date shall be determined

by an independent appraiser to be selected by mutual agreement of the parties hereto. That the cost of appraisal shall be born by the Lessee. That additional appraisals of the value of the land, not including any building or structure thereon, shall then be made ten (10) years, fifteen (15) years, and twenty (20) years after the occupancy date (and twenty-five (25) years and thirty (30) years after the occupancy date should Lessee elect to exercise his right and option under this lease to renew for a period of ten (10) years).

That any increase in the value of the land not including any building or structure thereon, shall be reflected by an increase in the monthly rental in the same proportion and ratio as the original appraisal value of the land is to the subsequent appraised value.

That is to say if the original value of the land is determined to be \$10,000.00 and the original monthly rental is \$300.00, and a subsequent appraised value is \$15,000.00 then the monthly rent would be increased to \$450.00 for the five (5) year period following the subsequent appraisal.

VII.

The Lessor agrees to provide any easements and rights-of-way necessary for construction and operation of any structure or building, and the operation of any business upon said land.

VIII.

The Lessee shall be responsible for all and every cost of constructing, building or placing of any building or structure upon said land.

IX.

The Lessee shall carry and maintain and pay all costs of personal and public liability insurance in a minimum amount of \$300,000.00, being \$100,000.00 personal liability and \$200,000.00 public liability.

X.

That Lessee has the right to erect, place, build, display and operate any signs, displays or billboards upon said land so long as those signs conform to and satisfy Klamath Falls City Ordinances and Codes and Klamath County requirements.

XI.

That this lease, in its entirety, is dependent upon the Lessee obtaining appropriate financing to construct or build a commercial building and accompanying structures upon the land.

XII.

That the Lessee will pay any increase in real property taxes on said land due to any building or structure he may build, place or construct upon said land. That Lessee intends to obtain separate tax billing by the Klamath County Tax Collector upon any building or structure he erects, places, construct or builds upon the land. That in the event the Lessee is unable to obtain separate tax billing on the building or structure upon the said land he will pay to the Lessor the appropriate tax based upon the appraised value of the buildings or structures upon said land, and the applicable tax rates.

XIII.

That Lessor agrees to subrogate to any loan or encumbrance the Lessee makes or effects in order to build, place or construct any building or structure upon said premises.

XIV.

It is the intention of the Lessee to construct a building on the land, which building he will in turn sublet, lease or otherwise convey to other businesses. The subleases or conveyances by the Lessee to those other businesses will contain a non-competition clause which will protect merchants and businesses already leasing from the Shopping Center for Oregon Foods, Inc. No business shall be allowed to occupy any space within or conduct business within said building if those businesses should be in direct conflict with any businesses occupying the Shopping Center for Oregon Foods, Inc. before the occupancy date.

XV.

The Lessee has full and complete rights of access to light and air over said land.

XVI.

The Lessee will not make any unlawful, improper or offensive use of said land; he will not suffer any strip or waste thereof; he will not permit any objectionable noise or odor to escape or to be emitted from said land or do anything or

permit anything to be done upon or about said land in any way tending to create a nuisance; he will not sell or permit to be sold any spirituous, vinous or malt liquors on said premises, excepting such as Lessee may be licensed by law to sell, ~~and as may be~~ ^{Edwin BO} ~~herein specifically permitted~~ ^{Edwin BO}

XVII.

Lessee shall comply at Lessee's own expense with all laws and regulations of any municipal, county, state, federal or other public authority respecting the use of said leased land.

XVIII.

The Lessor shall not be required to make any repairs, alterations, additions or improvements to or upon said land during the term of this lease, except only those herein specifically provided for; the Lessee hereby agrees to maintain and keep said leased land in good order and repair during the entire term of this lease at Lessee's own cost and expense.

XIX.

The Lessee may assign, transfer, pledge, hypothecate, surrender or dispose of this lease, or any interest herein, and permit any other person or person whomsoever to occupy the demised land without the consent of the Lessor; this lease is not personal to said Lessee; Lessee's interests, in whole or in part, can be sold, assigned and transferred.

XX.

In case suit or action is instituted to enforce compliance with any of the terms, covenants or conditions of this lease, or to collect the rental which may become due hereunder, or any portion thereof, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in such suit or action and in the event any appeal is taken from any judgment or decree in such suit or action, the losing party agrees to pay such further sum as the appellate court shall adjudge reasonable as prevailing party's attorney's fees on such appeal. The Lessee agrees to pay and discharge all Lessor's costs and expenses, including Lessor's reasonable attorney's fees that shall arise from enforcing any provision or covenants of this lease even though no suit or action is instituted.

XXI.

Any waiver by the Lessee or Lessor of any breach of any covenant herein contained to be kept and performed by the Lessee shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the Lessor or Lessee from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

XXII.

Any notice required by the terms of this lease to be given by one party hereto to the other or desired so to be given, shall be sufficient if in writing contained in a sealed envelope, deposited in the U.S. Registered Mails with postage fully prepaid, and if intended for the Lessor herein then if addressed to Lessor at 13200 Stead Boulevard, Reno, Nevada 89506; and if intended for the Lessee, then if addressed to the Lessee at 5844 Alva, Klamath Falls, Oregon 97601. Any such notice shall be deemed conclusively to have been delivered to the addressee thereof forty-eight (48) hours after the deposit thereof in said U. S. Registered Mails.

XXIII.

All rights, remedies and liabilities herein given to or imposed upon either of the parties hereto shall extend to, inure to the benefit of and bind, as the circumstances may require, the heirs, executors, administrators, successors and, so far as this lease is assignable by the term hereof, to the assigns of such parties.

XXIV.

The Lessee will be responsible for obtaining all City of Klamath Falls and County of Klamath permits and variances necessary to construct and operate the building Lessee intends to construct upon said land and to operate the businesses that occupy the building. Lessee believes that a parking space variance will be necessary to obtain a building permit for the building Lessee intends to build upon said land; and Lessor agrees to aid and assist the Lessee in obtaining such a variance by permitting Lessee to attempt to obtain and obtain a variance for the Shopping Center for Oregon Foods, Inc., should that be necessary for Lessee to obtain a parking variance and building permit for the building Lessee intends to build on said land.

XXV.

If for any reason, construction financing cannot be obtained for the building the Lessee intends to build upon said land, then this lease is null and void and without any effect.

IN WITNESS WHEREOF, the respective parties have executed this instrument in duplicate on this, the day and year first hereinabove written, any corporation signature being by authority of its Board of Directors.

LESSOR:

Bill P. Dicky
Bill Dicky

Dated this 25th day of
June, 1976.

LESSEE:

Erskine DeLoe
Erskine DeLoe

I, Robin Orhood, attorney for the lessee, hereby witness that I saw each of the parties to this Land Lease sign this Land Lease in duplicate at Reno, Nevada on June 25, 1976.

Robin Orhood

Real Property Taxes to be paid as follows:
Taxes upon the land which is the subject:
Lease to be paid by Bill Dicky 13200 Stead Blvd., Reno, Nevada
Taxes upon any structures or buildings upon said land to be paid by
Erskine DeLoe, 5844 Alva St., Klamath Falls, Oregon
Return Original Deed to Erskine DeLoe - 5844 Alva St., Klamath Falls, Oregon

LEASE OF LAND

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This map, and the writings hereon, have been and are incorporated into and made a part of this Land Lease to which it is attached. The land which is the subject of this lease is hereon described and defined by outline, being a parallelogram one hundred and ten and thirty-two hundredths feet (110.32') on the long sides and fifty-two feet (52') on the short sides. The North and West boundaries of said land are common boundaries with the boundaries of the property of the Shopping Center for Oregon Foods, Inc.; and along its entire length the East boundary of said land fronts Avalon Street.

The area so described and intended to be the subject of this lease is outlined on this map.

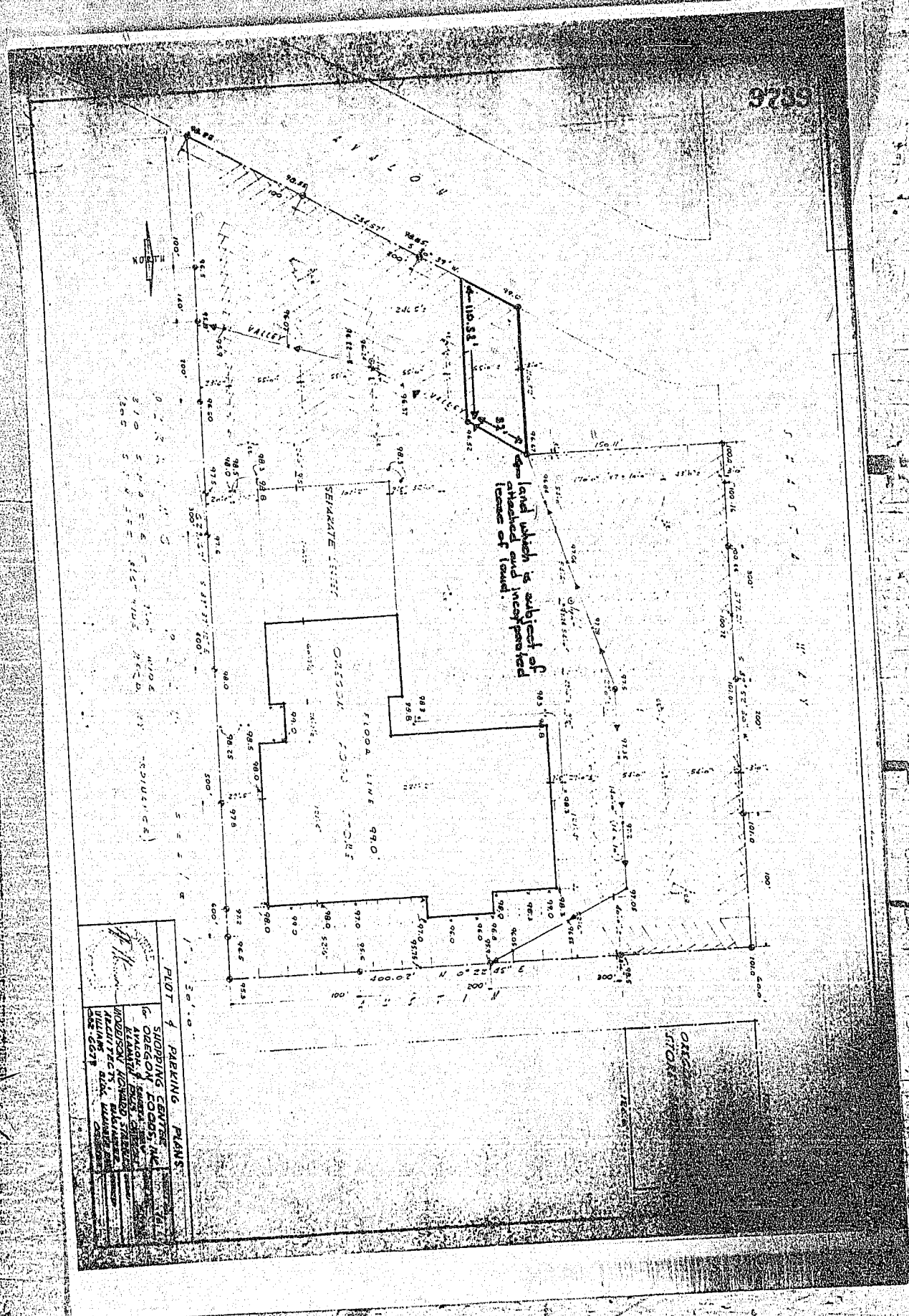
Dated
June 25, 1976

Bill Dickey
Bill Dickey

Erskine DeLoe
Erskine DeLoe

Witness:

[Signature]



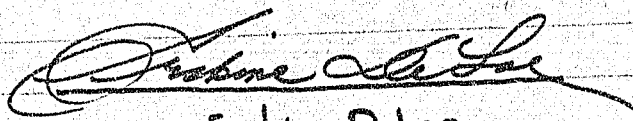
Addendum to Lease of Land XXVI

This Lease of Land is subject and subordinate to any and all mortgages or deeds of trust now or hereafter placed on the property of which the land which is the subject of this lease is a part, provided, however, that in each such case the holder of the mortgage or trustee of such deed of trust shall agree that this Lease shall not be divested or in any way affected by foreclosure or other default proceedings under such mortgage, deed of trust, or obligation secured thereby, so long as the Lessee shall not be in default under the terms of this Land Lease; and this Land Lease shall remain in full force and effect notwithstanding any such default proceedings under such mortgage, deed of trust or obligation secured thereby

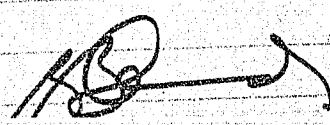
Dated
June 26, 1976



Bill Dickey



Erskine DeLoe

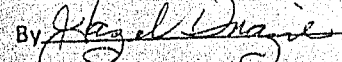
Witness: 

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 28th day of June A.D., 19 76 at 1:24 o'clock P.M., and duly recorded in Vol. M 76, of DEEDS on Page 9731.

FEE \$ 30.00

WM. D. MILNE, County Clerk

By  Deputy