

42332

MTG-13939
MEMORANDUM OF SUBLEASE

Vol. 184 Page 17873

THIS MEMORANDUM OF SUBLEASE is made and entered into this 10th day of August, 1984, between JAMES L. ECKHARDT and NELLIE R. ECKHARDT, husband and wife, and CARLTON BROTHERS, a general partnership between George A. Carlton, Elizabeth J. Carlton, Richmond J. Carlton and Margaret Carlton. Sublandlord has leased, and hereby does lease the Leased Premises to Subtenant, and desires to execute and record this Memorandum as notice thereof. The Sublease contains the following covenants and terms, and other provisions not set forth here in full:

1. Definitions. The following terms as used in this Sublease shall have the meanings hereinafter set forth:

1.1. "Sublandlord": James L. Eckhardt and Nellie R. Eckhardt, husband and wife.

1.2. "Subtenant": Carlton Brothers, a general partnership between George A. Carlton, Elizabeth J. Carlton, Richmond J. Carlton and Margaret Carlton.

1.3. "Leased Premises": That certain land and real property together with all buildings and improvements thereon located in the County of Klamath, State of Oregon, more particularly described in Schedule I attached hereto. The Leased Premises includes such easements for access as are shown on Schedule I attached hereto.

1.4. "Master Lease": That certain Lease covering the ground which is a part of the Leased Premises entered into on the same date as this Sublease between Carlton Brothers, a general partnership, (Subtenant herein) as Landlord and James L. Eckhardt

and Nellie R. Eckhardt, husband and wife, (Sublandlord herein) as Tenant.

2. Term.

2.1. Sublandlord leases and Subtenant rents the Leased Premises for a term commencing on October 1, 1984, or upon the substantial completion of improvements to be constructed by Sublandlord on the Leased Premises, whichever occurs later, and terminating on September 30, 1994. This Sublease may terminate earlier in the case of default as provided for herein, or in the event Subtenant exercises the option to purchase granted herein.

2.2. Subtenant may, by giving notice to Sublandlord not later than October 1, 1993, enter into negotiations with Sublandlord to extend the term of this Sublease for an additional five (5) years. Upon such notice, all terms and conditions of this Sublease, including but not limited to rent, will be subject to negotiation between the parties. If for any reason the parties have not agreed upon all terms and conditions for the extension of the term of this Sublease not later than six (6) months prior to the expiration of the term hereof, the Subtenant's attempt to extend the term of this Sublease shall be void, and the term of this Sublease shall expire on September 30, 1994. The parties specifically understand and agree that neither party has an obligation in such negotiations to agree to any particular term, nor to agree to any particular rent, and either party may insist on a particular rent or other terms whether or not such rent or terms are reasonable. The parties understand that the provision of this subparagraph constitutes only a statement of the parties' intent to consider the proposals of the other parties, and the parties specifically declare that they

understand this subparagraph is not judicially enforceable. The parties specifically declare their intent that this provision be separable from the remainder of this Sublease and intend that the remainder of this Sublease remain in full force and effect even if this subparagraph is invalid or unenforceable.

5. Use of Premises. Subtenant covenants and agrees that the Leased Premises shall be used only as a storage facility for fresh potatoes, and covenants and agrees that the Leased Premises shall not be used for any other purpose.

21. Assignment and Subletting. Subtenant shall not assign this Sublease. Subtenant may sublet the Leased Premises or any portion thereof only with the prior written consent of Sublandlord which consent will not be unreasonably withheld. In granting or withholding such consent, Sublandlord may consider the financial standing of such proposed subtenant, the potential use of the Leased Premises by such subtenant, and all other factors that Sublandlord may determine to be appropriate. In no event shall Sublandlord be required to give reasonable consideration to a sublease after such sublease has in fact been entered into by Subtenant. Any assignment or subletting in violation of the terms of this paragraph shall be deemed to be a material default. No assignment or subletting of this Sublease whether by act of Subtenant or by operation of law shall vest any title interest in or to the claimed assignee or subtenant. Approval or consent to a subletting of the Leased Premises shall not reduce Subtenant's liability hereunder and shall not constitute approval or consent to any subsequent subletting.

31. Mortgage.

31.1. Sublandlord may place a mortgage or deed of trust upon the Leased Premises. Such mortgage or deed of trust shall

encumber the entire Leased Premises including both Sublandlord and Subtenant's interest under this Sublease, and the entire fee ownership of the Leased Premises. Any such mortgage shall be a first lien and encumbrance upon the Leased Premises, whether executed or recorded before or after the effective date of this Sublease.

31.2. If requested by Sublandlord or the holder of a mortgage referred to in the subparagraph above, Subtenant will execute a subordination agreement in a form acceptable to the holder of such mortgage subordinating this Sublease, and all of Subtenant's interest under this Sublease and interest in and to the Leased Premises, to such mortgage or deed of trust. Subtenant agrees to execute such additional and further documents or instruments as may be reasonable or necessary to allow Sublandlord to obtain financing or refinancing of the Leased Premises. Subtenant specifically acknowledges that the parties contemplate a renegotiation of Sublandlord's financing during the term of this Sublease, and all of the provisions of this Sublease relating to Sublandlord's lender and the placing of a mortgage or mortgages upon the Leased Premises shall apply with equal force to any mortgage or other lien placed upon the Leased Premises by Sublandlord at any time during the term of this Lease.

31.3. In the event Subtenant contends that a default exists hereunder, Subtenant shall furnish a copy of any notice of default to the holder of such mortgage.

**SEE ADDENDUM TO SUBLEASE
31.4. Upon a written request by Sublandlord, or the holder of such mortgage, Subtenant agrees that Subtenant will certify in writing to persons designated by Sublandlord:

(a) That Sublandlord has performed all of Sublandlord's obligations hereunder and is not in default under this Sublease;

(b) That this Sublease is in full force and effect; and

(c) That each person receiving such certification may rely thereon for all purposes.

IN WITNESS WHEREOF, the Sublandlord and Subtenant do hereby execute this Sublease the day and year first above written.

SUBLANDLORD:

James L. Eckhardt
James L. Eckhardt

Nellie R. Eckhardt
Nellie R. Eckhardt

SUBTENANT:

Richmond J. Carlton
Richmond J. Carlton, individually

Margaret J. Carlton
Margaret Carlton, individually

CARLTON BROTHERS

By George A. Carlton
George A. Carlton, a partner

By Richmond J. Carlton
Richmond J. Carlton, a partner

STATE OF Idaho)
) ss:
County of Canyon)

17878

On this 10th day of August, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared JAMES L. ECKHARDT and NELLIE R. ECKHARDT, husband and wife, known or identified to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Jon E. Labrecque
NOTARY PUBLIC for Idaho
Residing at: Meridian

STATE OF Oregon)
) ss:
County of Klamath)

On this 24th day of August, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared RICHMOND J. CARLTON and MARGARET CARLTON, husband and wife, known or identified to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Michael L. Brant
NOTARY PUBLIC for Oregon
Residing at: Klamath Falls, Oregon

STATE OF Oregon)
) ss:
County of Klamath)

On this 24th day of August, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared GEORGE A. CARLTON, ~~ELIZABETH J. CARLTON~~, RICHMOND J. CARLTON and ~~MARGARET CARLTON~~, known or identified to me to be the partners in the partnership of CARLTON BROTHERS, a general partnership, and the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that they executed the same in said partnership name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Michael L. Brant
NOTARY PUBLIC for Oregon
Residing at: Klamath Falls, Oregon

SCHEDULE I

A piece or parcel of land situated in the Northwest-quarter of the Southwest-quarter (NW1/4-SW1/4) of Section 1, Township 41 South, Range 10 East, Willamette Meridian, in Klamath County, Oregon, being more particularly described as follows:

Beginning at the Southwest corner of the Northwest-quarter of the Southwest-quarter (NW1/4-SW1/4) of Section 1, Township 41 South, Range 10 East., Willamette Meridian as the same is now marked by a steel monument at the intersection of the centerlines of Main Street and Fourth Street in the City of Merrill, Oregon; thence East along the southerly boundary of the said NW1/4-SW1/4 873.0 feet to a point which is the true point of beginning of this parcel; thence North 395.0 feet to a point; thence East 240.0 feet to a point; then South 395.0 feet to a point; thence West 240.0 feet to the true point of beginning; containing two acres, more or less, and being subject to all rights-of-way and/or easements of record or apparent on the premises.

RETURN: James L. Eckhardt
723 E. Karcher Rd.
Nampa, ID 83651

STATE OF OREGON,)
County of Klamath }

Filed for record at request of

on this 17th day of October A.D. 19 84
at 2:36 o'clock P M, and duly
recorded in Vol. M84 of Deeds
Page 17873

EVELYN BIEHN, County Clerk

By Ann Smith Deputy

Fee 28.00 Index: \$1.00