

Aspen 32431

CONDITIONAL
ASSIGNMENT OF LEASES AND RENTSDATED: *AFK* July Aug. 1, 1988FROM: Waymover Plaza Limited Partnership
BY: Viking Financial Services, Inc., General Partner
1935 SW 6th Ave.
Portland, OR 97204

ASSIGNOR

TO: OREGON PUBLIC EMPLOYES' RETIREMENT FUND
159 State Capitol Building
Salem, OR 97310

ASSIGNEE

FOR VALUABLE CONSIDERATION, paid by Assignee to Assignor, Assignor hereby assigns unto Assignee all of the right, title and interest of Assignor in, under or by virtue of each of the leases described in attached Exhibit B, affecting the real property ("Real Property") described in attached Exhibit A, together with any renewals or extensions thereof and together with all rents, income and profits arising therefrom.

This assignment shall include any and all other leases or rental agreements that may now be in effect, as well as any future or additional leases or rental agreements, and any renewals or extensions of such leases or rental agreements, that may be entered into by Assignor for the lease or rental of the Real Property or any part thereof (collectively, "Leases"), and Assignor herein agrees to execute and deliver such other and further assignments of the Leases as Assignee herein may require.

TO HAVE AND TO HOLD the same unto Assignee, and to its successors and assigns, as security for the payment of the principal and interest provided to be paid in that certain promissory note ("Note") made by Assignor, dated July Aug 1, 1988, in the principal sum of one MILLION Five HUNDRED --- THOUSAND AND NO/100 DOLLARS (\$1,500,000.00), and interest, and for the performance of the covenants contained in the deed of trust or mortgage ("Deed of Trust") bearing even date therewith encumbering the Real Property. *AFK*

RESERVING, HOWEVER, unto Assignor, a license to collect and retain the rentals as they become due, but not in advance, under the Leases so long as there is no default in any of the terms, covenants or provisions of the Note, the Deed of Trust or this Assignment. In the event of any such default, Assignee is hereby empowered to collect the rents, income and profits as they come due as well as all past due rents, income and profits which are yet uncollected by Assignor under the Leases and apply the net amount of same after payment of all charges, expenses and fees, on account of the indebtedness for which this Assignment is security; and, further, Assignee may at its option enter and take possession of the Real Property, or any part thereof, and exercise all the rights and privileges of Assignor with respect thereto, including the right to let or relet the Real Property, or any part thereof, and to collect the rents, income and profits under any such new lease in accordance with the foregoing. Assignee shall only be accountable for money actually received pursuant to this Assignment.

Assignor hereby authorizes Assignee, at its election, to perform any of Assignor's obligations to any lessee under any of the Leases, exercise any of Assignor's rights, powers or privileges under the Leases, modify any of the Leases, and execute a new lease on all property covered by any of the Leases.

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Notwithstanding the above-granted authorization, whereby Assignee may perform any of Assignor's obligations, Assignee may, at its election, subsequent to any default by Assignor under any of the Leases and by the giving of written notice to Assignor, assume any of the obligations of Assignor or its assigns to the lessee under any of the Leases.

Whether Assignee acts as agent of Assignor (in performance of Assignor's obligations) or under an express assumption of Assignor's obligations, or in the exercise of any of the rights, powers or privileges accorded Assignee hereunder, Assignor will reimburse Assignee and the receiver for any expenses or liabilities incurred. Assignor shall reimburse Assignee and any receiver for expenses and liabilities so incurred on demand with interest thereon at

the interest rate under the Note from time to time, but not in any event at a rate higher than the maximum rate permitted by law, from the date of expenditure until repaid. Furthermore, a failure to reimburse Assignee and the receiver shall constitute a default under this instrument whereby the Assignee may apply all rents, income or profits as they become due as well as all past due yet uncollected rents, income or profits toward the payment of such expenses. Furthermore, the above mentioned rents, income or profits shall be first applied toward the payment of such expenses whether or not any other debts secured by this assignment have accrued.

The rights and remedies of Assignee under this Assignment are cumulative, are not in lieu of but are in addition to, and the exercise or the failure to exercise the same shall not constitute a waiver of, any other rights and remedies which the Assignee shall have under the Note or the Deed of Trust. The rights and remedies of Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

Except as otherwise provided herein, this Assignment shall not operate to place responsibility for the control, care, management or repair of the Real Property, or any part thereof, under Assignee, nor for the carrying out of any of the terms and conditions of the Leases, unless such responsibility is specifically assumed by Assignee in writing; nor shall it operate to make Assignee responsible or liable for any waste committed on the Real Property by the lessee or any other party, or for any dangerous or defective condition of the Real Property, or for any negligence in the management, upkeep, repair or control of the Real Property resulting in loss or injury or death to any lessee, licensee, employee or stranger. Assignor agrees to indemnify and hold Assignee harmless of and from any and all liability, loss or damage which Assignee may incur under any of the Leases or by reason of this Assignment and of and from any and all claims whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking to be performed or discharged by Assignee under any of the Leases or this Assignment; provided, Assignor will not be required to indemnify Assignee or be responsible for Assignee's own negligence or wrongful conduct. Except as otherwise expressly stated, nothing herein contained shall be construed to bind Assignee to the performance of any of the terms and provisions contained in any of the Leases, or otherwise to impose any obligation on Assignee, including, without limitation, any liability under the covenant of quiet enjoyment contained in any of the Leases in the event that any lessee shall have been joined as party defendant in any action to foreclose the Deed of Trust, and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in any part of the Real Property.

No security deposited by any lessee with the Assignor under the terms of any of the Leases has been transferred to

Assignee, and Assignee assumes no liability for any security so deposited.

Except as disclosed in the Estoppel Certificates provided to Lender in connection with this transaction, Assignor covenants and warrants to Assignee: that the terms of each of the Leases heretofore submitted to Assignee embody the entire agreement now existing between Assignor and the lessees under the Leases; that there are no defaults existing under any of the Leases; that all conditions precedent to the effectiveness of each of the Leases have been satisfied; that Assignor has not executed or granted any modification whatever of any of the Leases, either orally or in writing, and each of the Leases is in full force and effect according to the terms set forth in the lease instruments heretofore submitted to Assignee; and that Assignor has not executed any prior assignment of any of the Leases or rentals nor has Assignor performed any acts or executed any other instrument which might prevent Assignee from operating under any of the terms and conditions of this Assignment.

Assignor further covenants that so long as any indebtedness secured hereby remains unpaid, Assignor will obtain and maintain at its expense not less than ~~twelve~~^{six} months' full rental value insurance coverage with respect to the Leases. *WJR*

Assignor further covenants not to cancel, accept surrender or terminate any of the Leases which are for a period of one year or longer, or change, alter or modify the rent schedule or accept prepayment of rent to become due thereunder or make any subsequent assignment of any of the Leases or consent to the assignment, subletting or subordination of the interests of lessees in the Leases, or any of them, without the prior written consent of Assignee, and any of said acts, if done without the written consent of Assignee, shall be null and void.

Upon payment in full of the entire indebtedness secured hereby, as evidenced by a recorded reconveyance of the Deed of Trust (or recorded satisfaction or release, if a mortgage), this Assignment shall be void and of no further force or effect and no instrument of reassignment, release of satisfaction of this Assignment shall be necessary.

All covenants and agreements herein contained shall extend to and inure to the benefit of and be binding upon the respective successors and assigns of the parties below.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the day and year first above written.

ASSIGNOR:

WAGGONER PLAZA LIMITED PARTNERSHIP
By: Viking Financial Services, Inc.
General Partner

By: *John J. Ketchum, President*

STATE OF OREGON)

County of MULTNOMAH) ss.

This instrument was acknowledged before me on Aug 1, 1988, by _____ and _____.

Betty J. W. SSB
Notary Public for
My commission expires:

EXHIBIT "A"

PARCEL 1:

A portion of the NE 1/4 SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at an iron pin on the South right of way line of South Sixth Street as presently located and constructed, which bears South 0 degrees 22' 15" East a distance of 48.5 feet from the Northwest corner of said NE 1/4 SE 1/4; thence Easterly, along said right of way line a distance of 142.5 feet to a point; thence South at right angles to said right of way line a distance of 460.0 feet to a point; thence West, parallel to said right of way line, a distance of 142.5 feet, more or less, to the West line of said NE 1/4 SE 1/4; thence North along said West line a distance of 460.0 feet to the point of beginning.

PARCEL 2:

A tract of land situated in the SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at the East one-fourth corner of said Section 3; thence South 39 degrees 52' West 1,275.74 feet; thence South 00 degrees 21' 47" East 54.10 feet to a one-half inch pipe on the Southerly right of way line of the Dalles-California Highway marking the Northeast corner of that parcel of land described in Deed Volume 251 at page 162, as recorded in the Klamath County Deed Records; thence continuing South 00 degrees 21' 47" East along the Eastline of said parcel described in said Deed Volume 251 at page 162, 233.00 feet to the true point of beginning of this description; thence continuing South 00 degrees 21' 47" East along said line 395.64 feet to the Northerly right of way line of the Oregon-California and Eastern Railway Company; thence North 67 degrees 41' West along said right of way line 156.57 feet (162 feet by record); thence North 00 degrees 55' 30" West along the West line of said parcel described in said Deed Volume 251 at page 162, 334.26 feet; thence North 89 degrees 14' East 147.71 feet to the true point of beginning of this description with bearings based on the East line of the SE 1/4 of said Section 3 as being South 01 degrees 14' East.

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EXHIBIT "A" CONTINUED

PARCEL 3:

A portion of the NW 1/4 SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at a one-half inch iron pin on the South right of way line of South Sixth Street, as the same is presently located and constructed, said point being on the West line of tract of land deeded to Miller by Deed Volume 251 at page 162 and the East line of a tract of land deeded to Wheeler by Deed Volume 142 at page 349, Klamath County Deed Records; thence South 0 degrees 55' 30" East along the line between the two above described tracts a distance of 341.6 feet to a 5/8 inch iron pin marking the Southeast corner of a tract of land deeded to United States National Bank of Oregon by Deed recorded in Volume M-72 at page 13690, Deed Records of Klamath County, Oregon, and the true point of beginning of this description; thence continuing South 0 degrees 55' 30" East a distance of 225.64 feet, more or less, to the Northeasterly right of way line of the O.C. & E. Railroad; thence North 67 degrees 41' West along said right of way line a distance of 148.11 feet to the Southwest corner of said Wheeler Tract; thence North 0 degrees 55' 30" West along the West line of said Wheeler Tract, a distance of 167.58 feet to the Southwest corner of said United States National Bank Tract; thence North 89 degrees 14' East along the South line of said tract, a distance of 136.09 feet to the point of beginning.

PARCEL 4:

A tract of land situated in the NE 1/4 SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows:

Beginning at a 1/2 inch iron pin which bears South 89 degrees 52' West a distance of 745.73 feet and South 0 degrees 20' 55" East a distance of 220.16 feet from the brass cap monument marking the East quarter corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, said beginning point also being on the South line of Tract described as Parcel #1 in Deed from Klamath County School District to Klamath County, recorded in Volume 295 at page 135, Deed Records of Klamath County, Oregon; thence continuing from said beginning point South 0 degrees 20' 55" East along a line parallel to and 4.0 feet distant Easterly, when measured at right angles to, from the existing Easterly wall of the Payless Drug Store Building as the same is presently located and constructed, a distance of

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EXHIBIT "A" CONTINUED

402.04 feet to a 1/2 inch iron pipe; thence South 53 degrees 42' 15" West a distance of 304.44 feet, more or less, to a 1/2 inch iron pipe on the Northeasterly boundary of the O. C. & E. Railroad right of way as the same is presently located and constructed, and from which point the aforesaid monument marking the East quarter corner of said Section 3 bears North 50 degrees 50' 20" East a distance of 1273.34 feet; thence Northwesterly along said Northeasterly boundary of the O. C. & E. Railroad right of way a distance of 299.5 feet, more or less, to the West line of said NE 1/4 SE 1/4; thence North along said West line a distance of 186.5 feet, more or less, to a point on said West line which bears South 0 degrees 22' 15" East a distance of 460.0 feet from the Southerly boundary line of the relocated right of way of the Klamath Falls-Lakeview Highway; thence Easterly, parallel with said highway right of way line a distance of 142.5 feet to a point; thence North, parallel with the West line of said NE 1/4 SE 1/4, a distance of 460.0 feet, more or less, to the Southerly boundary of said relocated highway right of way; thence Easterly along said relocated right of way line a distance of 387.7 feet, more or less, to a point which bears North 0 degrees 20' 55" West from the point of beginning; thence South 0 degrees 20' 55" East a distance of 174.66 feet, more or less, to the point of beginning.

PARCEL 5.

A parcel of land lying in the NE 1/4 SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows:

Beginning at a point which bears South 01 degrees 14' East a distance of 55.03 feet and South 89 degrees 14' West a distance of 580.0 feet from the quarter section corner common to Sections 2 and 3, said Township and Range, said point being on the South right of way line of South Sixth Street as presently located and constructed; thence continuing South 89 degrees 14' West along said South right of way line a distance of 129.4 feet to the Northwest corner of this description; thence South 0 degrees 18' East a distance of 137.0 feet to an iron pin; thence North 89 degrees 14' East a distance of 131.9 feet to an iron pin; thence North 01 degrees 14' West a distance of 137.0 feet, more or less, to the point of beginning.

EXCEPTING a strip of land 8 feet wide running North and South on the West side of said parcel reserved for sidewalk purposes.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title Co. the 3rd day
of Aug. A.D. 19 88 at 12:54 o'clock P. M., and duly recorded in Vol. M88
of Mortgages on Page 12507
By Evelyn Biehn County Clerk
Sandra Miller