

77681

**SUBORDINATION, NON-DISTURBANCE,
ESTOPPEL AND ATTORNEY AGREEMENT**

Date: March 19, 1994

From: Klamath Falls Public Schools
Union High District No. 2
475 South Alameda

Klamath Falls, OR 97603-3795

CLYDE A. COLLINS AND LINDA J. COLLINS

9040 Highway 140, East

Klamath Falls, OR 97603

To: UNITED STATES NATIONAL BANK OF OREGON

Commercial Real Estate-Loan Administration

501 S. E. Hawthorne Blvd., 5th Floor

Portland, OR 97214-3598

("Lender")

(Address)

(City, State, Zip)

Lease Dated: August 28, 1989

Lease Term: June 30, 1994

W I T N E S S E T H:

WHEREAS, the Tenant has entered into a lease dated August 28, 1994 (the "Lease") with Waggoner Plaza, a Limited Partnership whose interest is held by Landlord, covering premises (the "Premises") described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, the Lender has agreed to make a loan of Nine Hundred Twenty-six Thousand and No/100 Dollars (\$ 926,000.00) to the Landlord secured by a Deed of Trust, hereinafter referred to as "mortgage" (which mortgage also secures any future advances made by Lender); provided, however, that said Lease is subordinate to the lien of the mortgage; and

WHEREAS, Lender has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant; NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of the Tenant in and to said Premises, including but not limited to any option or right of first refusal to purchase the Premises, or any acquisition of title to the Premises by Tenant during the term of the mortgage, are and shall be subject and subordinate to the mortgage and to all of the terms and conditions contained herein, and to any renewals, modifications, replacements, consolidations and extensions thereof.

2. Lender consents to the Lease and, in the event of foreclosure of said mortgage, or in the event Lender comes into possession or acquires title to the Premises as a result of the enforcement or foreclosure of the mortgage or mortgage note, or as a result of any other means, Lender agrees to recognize Tenant and further agrees that Tenant shall not be disturbed

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in its possession of the Premises for any reason other than one which would entitle the Landlord to terminate the Lease under its terms or would cause, without further action by such Landlord, the termination of the Lease or would entitle such Landlord to dispossess the Tenant from the Premises.

3. Tenant agrees with Lender that if the interest of Landlord in the Premises shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it, or by any other manner, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be affected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the Landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Lender succeeding to the interest of the Landlord in the Premises. Tenant agrees, however, upon the election of and written demand by Lender after Lender receives title to the Premises, to promptly execute an instrument in confirmation of the foregoing provisions, satisfactory to Lender, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

4. Tenant agrees with Lender that if Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be (a) liable for any action or omission of any prior landlord under the Lease, or (b) subject to any offsets or defenses which Tenant might have against any prior landlord, or (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, or (d) bound by any security deposit which Tenant may have paid to any prior landlord, unless such deposit is in an escrow fund available to Lender, or (e) bound by any amendment or modification of the Lease made without Lender's consent, or (f) bound by any provision in the Lease which obligates the Landlord to erect or complete any building or to perform any construction work or to make any improvements to the Premises. Tenant further agrees with Lender that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Lender's consent.

5. Tenant shall provide Lender with a copy of any written notice that Tenant sends to or receives from Landlord no later than 10 days after transmission or receipt. In the event that the Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to the Lender and the Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including and without limitation, any action in order to terminate, rescind or void the Lease or to withhold any rental thereunder, for a period of ten (10) days after receipt of such written notice thereof by the Lender with respect to any such default capable of being cured by the payment of money and for a period of thirty (30) days after receipt of such written notice thereof by the Lender with respect to any other such default (provided, that in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period because of the nature of such default or because Lender requires time to obtain possession of the Premises in order to cure the default, if Lender shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity).

6. Tenant agrees with Lender that Tenant's estate in the Premises shall not be conveyed or encumbered without the written consent of the Lender so long as the Lease is in effect.

7. Landlord and Tenant hereby covenant and agree with Lender as follows:

a. The Lease has been properly executed and delivered by Tenant, is valid and binding upon Tenant, has not been modified, and is in full force and effect;

b. There exist no defaults under the terms of the Lease by Landlord or Tenant;

c. Tenant has not paid any rental to Landlord more than one month in advance and Landlord holds no security deposit for Tenant except \$_____;

d. Tenant has no defense, claim of lien or offset, under the Lease or against the rental payable thereunder; and

e. Tenant has no claims to or interest in the Premises, legal or equitable, or any contract or option therefore, other than as a tenant under the Lease.

Tenant hereby agrees that it will promptly notify Lender in writing of and when any of the above conditions should become untrue or incorrect in any material respect.

8. This Agreement shall bind and inure to the benefit of all parties hereto, their successors and assigns. As used herein the term "Tenant" shall include the Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure, and the word "Lender" shall include the Lender herein specifically named and any of its successors and assigns, including anyone who shall succeed to Landlord's interest in the Premises by, through or under foreclosure of the mortgage.

9. This Agreement shall not be modified or amended except in writing signed by the parties hereto.

10. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

11. Notwithstanding any of the other provisions hereof, this agreement is not intended to create and shall not be deemed to create any personal liability on the part of tenant for repayment of the loan secured by the mortgage.

IN WITNESS WHEREOF the parties hereto have placed their hands and seals the day and year first above written.

Landlord: CLYDE A. COLLINS and LINDA J. COLLINS

By: Clyde A. Collins

Its: _____

By: Linda J. Collins

Its: _____

to be delivered out to _____

between _____

By: Shirley Bolmer

Its: Vice President

By: _____

Its: _____

Tenant: Klamath Falls Public Schools and

By: Ray E. Crawford

Its: _____

By: _____

Its: _____

to be delivered out to _____

between _____

By: _____

Its: _____

By: _____

Its: _____

Lender: UNITED STATES NATIONAL BANK OF OREGON

By: Shirley Bolmer

Its: Vice President

By: _____

Its: _____

TENANTS FORM OF ACKNOWLEDGMENT

Per INDIVIDUAL ACKNOWLEDGMENT

STATE OF Oregon

County of Klamath

Personally appeared _____

and acknowledged the foregoing instrument to be

voluntary act.

Before me: _____

Notary Public for _____

My commission expires: _____

LANDLORDS FORM OF ACKNOWLEDGMENT

Per INDIVIDUAL ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Los Angeles

Personally appeared Clyde A. Collins and

and acknowledged the foregoing instrument to be their

voluntary act.

Before me: Margaret Pilon

Notary Public for the State of California

My commission expires: March 28, 1996

CORPORATE ACKNOWLEDGMENT

STATE OF Oregon

County of Klamath

Personally appeared Ray E. Crawford

and _____ who,

being sworn, stated that he, the said Ray E. Crawford

is the superintendent of tenant and he, the said

_____ is a _____ of

_____ and that the seal affixed

hereto is its seal and that this instrument was voluntarily

signed and sealed on behalf of the corporation by Authority

of its Board of Directors.

Before me: Shirley Bolmer

Notary Public for Oregon

My commission expires: 6-18-94



MARGARET PILON

COMM. #958281

NOTARY PUBLIC - CALIFORNIA

LOS ANGELES COUNTY

My Commission Exp. Mar. 28, 1996

CORPORATE ACKNOWLEDGMENT

STATE OF _____

County of _____

Personally appeared _____

and _____ who,

being sworn, stated that he, the said _____

is a _____ and he, the said

_____ is a _____ of

_____ and that the seal affixed

hereto is its seal and that this instrument was voluntarily

signed and sealed on behalf of the corporation by Authority

of its Board of Directors.

Before me: _____

Notary Public for _____

My commission expires: _____

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TENANTS FORM OF ACKNOWLEDGMENT

PARTNERSHIP ACKNOWLEDGMENT

STATE OF _____)
 County of _____) ss. _____, 19____

Personally appeared _____
 who, being sworn, stated that _____ he _____ executed the fore-
 going instrument and is/are member _____ of the partnership of
 _____ and acknowledged that _____ he _____
 executed said instrument freely and voluntarily on behalf of
 said partnership.

Before me: _____
 Notary Public for _____
 My commission expires: _____

LANDLORDS FORM OF ACKNOWLEDGMENT

PARTNERSHIP ACKNOWLEDGMENT

STATE OF _____)
 County of _____) ss. _____, 19____

Personally appeared _____
 who, being sworn, stated that _____ he _____ executed the fore-
 going instrument and is/are member _____ of the partnership of
 _____ and acknowledged that _____ he _____
 said instrument freely and voluntarily on behalf of said
 partnership.

Before me: _____
 Notary Public for _____
 My commission expires: _____

BANK ACKNOWLEDGMENT

STATE OF Oregon)
 County of Multnomah) ss. _____

Personally appeared David P. Robinson, who being sworn, stated that he/she
 is a(n) Vice President of United States National Bank, and
 acknowledged that this instrument was voluntarily signed on behalf of the association by authority of its Board of Directors.

Before me: Barbara K. Liniger
 Notary Public for Oregon
 My commission expires: 02/23/95



OFFICIAL SEAL
 BARBARA K. LINIGER
 NOTARY PUBLIC - OREGON
 COMMISSION NO. 004527

COMMISSION EXPIRES FEB. 23, 1995

AFTER RECORDING, RETURN TO:

THIS SPACE FOR RECORDER USE

County of _____
 State of _____
 Personally appeared _____
 and _____
 being sworn, stated that _____
 is a _____ and _____
 and that the said _____
 party is the _____ and that the instrument was voluntarily
 signed and sealed on behalf of the corporation by authority
 of the Board of Directors.
 Before me: _____
 Notary Public for _____
 My commission expires: _____

STATE OF _____
 County of _____
 Personally appeared _____
 and _____
 being sworn, stated that _____
 is a _____ and _____
 and that the said _____
 party is the _____ and that the instrument was voluntarily
 signed and sealed on behalf of the corporation by authority
 of the Board of Directors.
 Before me: _____
 Notary Public for _____
 My commission expires: _____

PARCEL 1

A portion of the NE1/4 SE1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, 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 NE1/4 SE1/4; 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 NE1/4 SE1/4; 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 NE1/4 SE1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly 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, Klamath County, Oregon, 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 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 NE1/4 SE1/4; 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 NE1/4 SE1/4, 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 3

A parcel of land lying in the NE1/4 SE1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly 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 Mountain Title Co the 17th day
of March A.D., 19 94 at 1:19 o'clock P.M., and duly recorded in Vol. M94,
of Mortgages on Page 8146.

FEE \$30.00

Evelyn Biehn - County Clerk

By Douglas Mulholland