

ASPER 42316

GROUND LEASE

DATE:

Nov 27, 1988

PARTIES:

BARBARA DEAN ENSMINGER and
DEAN BROOKS WARNER
1915 Etna Street
Klamath Falls, Oregon 97603

LESSORS

JAMES R. TITUS and FRIEDA J. TITUS
3131 South Sixth Street
Klamath Falls, Oregon

LESSEES

RECEIPTS:

A. Lessors are the owners of real property situate in Klamath County, Oregon, described as:

Lots 2, 3, 4 and the N $\frac{1}{2}$ of Lot 5, Block 207, Mills Second Addition to the City of Klamath Falls, Oregon (hereinafter called "the Premises").

B. Dean J. Hall, the predecessor in interest of the Lessors, on the 17th day of November, 1972, entered into a Lease with Atlantic Richfield Company, as Lessee, which Lease will terminate effective November 30, 1988. The Lessees have been a sub-lessee of Atlantic Richfield Company.

C. The Lessees desire to make improvements to the premises that will require extensive upgrading and the Lessees desire to enter into this Ground Lease prior to making such improvements.

D. This Ground Lease is conditioned upon Atlantic Richfield Company terminating the Lease dated November 17, 1972.

The parties agree as follows:

GROUND LEASE

After Recording Return To:
Gary Jones, Town & County Rec
U.S. Bank
3220 5th ST
Klamath Falls OR 97603

SECTION 1. AGREEMENT TO LEASE

Lessors hereby lease to Lessees and Lessees hereby lease from Lessors the Premises on terms and conditions set forth below.

SECTION 2. TERM

2.1 Term. The term of this Lease shall begin on December 1, 1988, and shall continue to midnight on November 30, 1993, unless it is extended or sooner terminated as provided in this Lease.

2.2 Renewal Terms. The Lessees shall have the sole and exclusive right to seven additional five year renewal terms of this Lease upon the same terms and conditions as this Lease. The renewal terms shall automatically be exercised unless the Lessees give the Lessors written notice not less than ninety (90) days prior to the expiration of the basic term or any renewal term of their intention not to renew this Lease.

SECTION 3. RENT

3.1 Basic Rent. Basic rent shall be the sum of \$1,000 per month. Lessees shall pay basic rent monthly in advance on the first day of each month. The obligation to pay basic rent shall commence on December 1, 1988. The monthly rent for any renewal term shall be increased by a percentage equal to one half of the percentage change in the Consumer Price Index published by the United State Bureau of Labor Statistics. Comparisons shall be made using the index entitled " U.S. City Average - All Urban Consumers." The change shall be determined by comparison of the figure for December 1, 1988 with that of the beginning date of each renewal term. If by the end of the 4th renewal term the Basic rent has not reached \$1,200 per month. Then at the beginning of the 5th renewal term the basic rent will automatically increase to \$1,200 per month.

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*for DBW
JDE*

3.2 General Rent Provisions. All rents shall be payable without deduction or offset to the order of Lessors at the address shown above, or at such other address as may be designated from time to time by Lessors. It is the intention of the parties that all rents payable under this Lease shall be net to Lessors and that all taxes, costs, expenses and obligations during the lease term relating to the Premises shall be paid by Lessees.

SECTION 4. -- USE OF PREMISES

Lessees may use the Premises for any lawful purpose, provided that Lessees shall refrain from storing on or discharging from or onto the Premises any hazardous wastes or toxic substances as defined in 42 USC §§9601-9657, except in compliance with all applicable federal and state laws and regulations. Upon termination of this Lease for any reason, Lessees shall remove all buildings, tanks, pipes and storage facilities now on or in the property or hereafter placed there by Lessees in compliance with said laws and regulations.

SECTION 5. TAXES AND ASSESSMENTS; UTILITIES

5.1 Payment. Lessors shall pay the taxes on the real property only and shall present Lessees with proof of payment. Lessees shall reimburse Lessors for said taxes within thirty (30) days of the date Lessors presents the statement to Lessee. Lessees shall pay before delinquency all other property taxes, liens or assessments levied on or assessed against the real property, the improvements thereon or personal property located on the Premises.

Payments shall be made directly to the taxing authority and proof thereof provided to Lessor. Any such tax, except taxes paid by Lessors to be reimbursed by Lessee, assessment or charge may be paid in installments in accordance with the schedule of the taxing authority.

5.2 Prorations. Taxes, assessments and charges for the tax years in which the lease term commences and expires shall be prorated between the parties on a daily basis as of the date of commencement or expiration.

SECTION 6. ALTERATIONS

Lessees may, from time to time, construct, improve, demolish, remove, replace, alter, reconstruct, ~~remodel~~ or add to any existing improvements in whole or in part ("alterations") as Lessees shall deem necessary or desirable and as approved by Lessor, which approval shall not be unreasonably withheld. No improvement shall be constructed which inhibits the ability of traffic on South Sixth Street from seeing the building presently known as the Radiator Shop.

SECTION 7. OWNERSHIP OF THE IMPROVEMENTS

All improvements constructed on the Premises by Lessees shall be owned by the Lessees. The Lessees shall remove all personal property, fixtures and improvements from the Premises within thirty (30) days of the termination of this Lease or any renewal thereof. Any personal property, fixtures and improvements not removed by the Lessees within thirty (30) days after the termination of this Lease shall be presumed to have been abandoned by the Lessees and

may be retained by Lessors or removed at Lessees' expense. The Lessees, upon removal of the personal property, storage tanks, fixtures and improvements, will leave the Premises blacktopped and in a neat and orderly manner.

SECTION 8. ASSIGNMENT

In the event the Lessees' interest is assigned pursuant to this Section, the Lessees shall nevertheless remain liable thereon for the balance of the term or renewal term in which the Lease is assigned but shall be released of further liability upon the conclusion of that term.

SECTION 9. CONDEMNATION

9.1 Total Substantial Taking.

9.1.1 A taking or condemnation shall be considered to be total or substantial if it includes all of the premises or so much of the premises that a reasonable amount of reconstruction would not make the land and improvements a practical development and reasonably suited for the uses and purposes for which the Premises were used just prior to the condemnation.

9.1.2 In the event of a total or substantial taking, the Lease shall terminate as of the date title or possession passes to the condemning authority. All rent, additional rent and other charges payable by Lessees under this Lease shall be prorated as of the date of termination.

9.2 Participation and Proceedings. Either party receiving any notice of intended taking, any service of legal process relating to condemnation or any other notification in connection with any

taking, condemnation or purchase, sale or transfer in lieu of condemnation shall promptly give the other party notice of such receipt. Lessors, Lessees and any leasehold mortgagee shall have the right to represent its respective interest in each such proceeding or negotiation and to make full proof of its claims. No sale, transfer, agreement or settlement with the condemning authority shall be made without the consent of Lessors and Lessees. For purposes of this Lease, taking or condemnation includes a sale to a purchaser with the power of eminent domain in the face of a threat or the probability for the exercise of the power.

SECTION 10. LESSEES' COVENANT TO REPAIR - TO COMPLY WITH LAW

Lessees shall keep the demised premises in good repair, and the apurtenances and all things connected therewith, including the adjacent alleys and sidewalks, in a clean and healthful condition and in good repair and free of snow and ice, according to the ordinances of the City of Klamath Falls and the direction of the appropriate public officers, during the term of this Lease, at Lessees' own expenses.

SECTION 11. LIABILITY INSURANCE

Lessees shall, during the full term of this Lease, at the expense of Lessees, carry public liability insurance providing for a minimum of \$100,000 per person, \$300,000 per accident, and \$50,000 for property damage, and procure a policy for accident or damages in the demised premises, on sidewalks in front thereof, and in entrance ways and other portions of the building in the control or use of Lessees, in the amounts set forth above.

Lessees shall pay the premiums on all insurance policies on the demised premises, and shall furnish Lessors with receipted bills or other evidence showing the payment.

If Lessees shall neglect to insure or keep insured in accordance with this Section, Lessors may, without notice to Lessee, renew or procure such insurance. Lessors shall give immediate notice of Lessees that Lessors have renewed or procured the insurance and shall state the amount of the premiums Lessors have paid therefore. Lessees shall then pay to Lessors, on the next rent date after receipt of this notice, the amount of premiums paid by Lessors, together with interest thereon at the rate of ten percent (10%) per annum.

SECTION 12. DEFAULT

Each of the following events shall be a default by Lessees and a breach of this Lease:

12.1 Failure to Pay Rent. Failure of Lessees to pay any rent, within ten (10) days after it is due.

12.2 Other Performance Failures. Failure of Lessees to perform any other term, condition or covenant of this Lease within twenty (20) days after written notice from Lessors specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the 20-day period, the failure shall not be a default if Lessees begin correction of the failure within the 20-day period and thereafter proceed with reasonable diligence and in good faith to correct the failure as soon as practicable.

12.3 Attachment. Attachment, execution, levy or other seizure by legal process of any right or interest of Lessees under this Lease, if not released within thirty (30) days, provided that the foreclosure of any mortgage permitted by this Lease relating to construction of improvements on the Premises shall not be construed to be a default within the meaning of this Section.

12.4 Bankruptcy. An assignment by Lessees for the benefit of creditors, the filing by Lessees of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy and failure of Lessees to secure a dismissal of the petition in bankruptcy and failure of Lessees to secure a dismissal of the petition within thirty (30) days after filing, the appointment of a receiver to take possession of the Premises or improvements or the leasehold estate or of Lessees' operations on the Premises for any reason. For purposes of this paragraph the term bankruptcy includes all arrangements and chapters in the Bankruptcy Code.

SECTION 13. REMEDIES ON DEFAULT

13.1 Lessors' Remedies. Upon default, Lessors may elect any one or more of the following consistent remedies:

13.1.1 Lessors may by notice to Lessees and to any qualifying mortgagee terminate this Lease. All of Lessees' rights in the Premises and in all improvements on the Premises, shall terminate as of the date of termination. Promptly after such notice, Lessees shall surrender and vacate the Premises in accordance with Section 4. Lessors may reenter and take possession of the Premises and of all improvements and eject some or all parties in possession

except any sublessee qualifying under any non-disturbance agreement by Lessors. Termination under this paragraph shall not relieve Lessees from the payment of any sum then due Lessors or from any claim for damages previously accrued or then accruing against Lessees or the cost of removal of all improvements.

13.1.2 Lessors may elect to reenter the Premises without terminating this Lease and from time to time relet the Premises, including any improvements or parts of improvements on the Premises, for the account and in the name of Lessors or otherwise. Lessors may elect to eject some or all persons then in possession, except any subtenant qualifying under a non-disturbance agreement by Lessors. Any reletting may be for the remainder of the term or for a longer or shorter period and Lessors may execute any leases made under this provision either in Lessors' names or in Lessees' names. Lessors shall apply all rents from the reletting first to the costs of reentry and reletting, including reasonable attorney fees, and then to rents and other amounts payable by Lessees under this Lease, including without limitation, any amounts which became payable prior to the reletting. Lessees shall nevertheless pay to Lessors on the due dates specified in this Lease all sums payable by Lessees under this Lease, plus Lessors' expenses of retaking and reletting, including any attorney fees, less amounts received by Lessors under this paragraph shall constitute a termination of this Lease unless Lessors give Lessees and any qualifying mortgagee a notice of termination.

13.1.3 Lessors may elect to use all or any part of Lessees' personal property and trade fixtures remaining on the Premises

without compensation to Lessees and without liability for use or damage; or Lessors may store all or any of Lessees' personal property and trade fixtures for the account of and at the cost of Lessees. The election of one remedy for any one item shall not preclude an election of any other remedy for another item or for the same item at a later time.

SECTION 14. ARBITRATION

14.1 Subjects. The following matters shall be subject to arbitration under this Lease:

14.1.1 Any controversy arising between Lessors and Lessees pursuant to a paragraph of this Lease which provides that a controversy relating to that paragraph shall be settled by arbitration.

14.1.2 Any other controversy between the parties relating to this Lease, if both parties agree that the matter shall be settled by arbitration.

14.1.2 Any other controversy between the parties relating to this Lease, if both parties agree that the matter shall be settled by arbitration.

14.2 Procedure. Any controversy or claim which is subject to arbitration shall be settled in accordance with the then current rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

SECTION 15. RIGHT OF FIRST REFUSAL

15.1 Restriction on Transfer. Lessors shall not, at any

time prior to the Termination Date, sell, contract to sell, transfer, exchange, grant an option to sell or lease, or otherwise dispose of the property to Lessees, which offer (hereinafter called the Lessors' Offer) shall specify, in commercially reasonable detail, the price, terms, and conditions upon which Lessors are willing to sell the Property.

15.2 Acceptance of Offer. Lessees shall have a period of thirty (30) days, following the giving of the Lessors' Offer Notice, within which to accept the Lessors' Offer by giving Lessors written notice of acceptance. If the Lessors' Offer is accepted, the parties shall be obliged to close the sale in accordance with the terms of the Lessors' Offer. Closing shall occur within thirty (30) days following acceptance or within such longer closing period as may be specified in the Lessor's Offer.

15.3 Sale to Third Party. If Lessees do not accept the Lessors' Offer, Lessors may sell the Property to any other party, provided that such a sale must be consummated (a) within 60 days following the earlier of the expiration of the acceptance period for the Lessors' Offer or the date of any written rejection of Lessors' Offer by Lessees, and (b) for and upon the same price, terms, and conditions as those specified in the Lessors' Offer. If such a sale to another party is consummated, Lessees' rights hereunder shall continue as to their rights in this Lease and subsequent sales to third parties.

SECTION 16. MISCELLANEOUS

16.1 Nonwaiver. Waiver by either party of strict performance

of any provision or term of this Lease shall not be a waiver of or prejudice the party's rights to required strict performance of the same provision or any other provision.

16.2 Notices. All notices under this Lease shall be effective on the earlier of actual receipt or two days after deposit is registered or certified mail, return receipt requested, postage prepaid and addressed to Lessors or Lessees at the addresses stated above, or to such other address as either party may specify by notice to the other party.

16.3 Attorney Fees. If suit or action is instituted to collect rent, to enforce this Lease, or in connection with any claim or controversy arising out of this Lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action. If arbitration is instituted in connection with any claim or controversy arising out of this Lease, attorney fees may be awarded by the arbitrators as they may decide, and if so awarded shall be apart of the aribtrator's decision on which judgment may be entered.

16.4 Severability. The invalidity or illegality of any provision of this Lease shall not affect the remainder of the Lease.

16.5 Governing Law. This Lease and the parties' rights under it shall be construed and regulated by the laws of the State of Oregon.

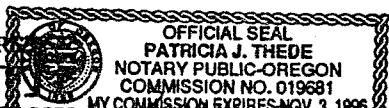
16.6 Memorandum of Lease. At the request of either party the parties will execute and acknowledge a Memorandum of Lease in recordable form which shall include a legal description of the

Premises, the term of the Lease, and the right of first refusal.

Either party may record the Memorandum.

IN WITNESS WHEREOF, the parties have set their hands and seals
the day and year first hereinabove written.

STATE OF OREGON
COUNTY OF KLAMATH



SUBSCRIBED AND SWORN TO BEFORE ME

THIS May 24th 1995

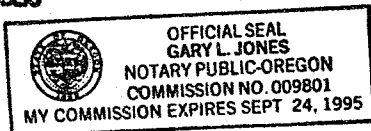
LESSEES:
NOTARY PUBLIC

STATE OF OREGON
COUNTY OF KLAMATH }

SUBSCRIBED AND SWORN TO BEFORE ME

THIS May 23 1995

NOTARY PUBLIC



STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title & Escrow the 24th day
of May A.D., 19 95 at 3:15 o'clock P M., and duly recorded in Vol. M95,
of Deeds on Page 13792.

FEE

\$90.00

By Bernetha G. Latsch, County Clerk