

Vol MOO Page 1131

**ASSIGNMENT AND MODIFICATION OF GROUND LEASE  
AND  
CONSENT TO ASSIGNMENT**

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**EFFECTIVE**

DATE: JANUARY 1, 2000

**PARTIES:** JAMES R. TITUS and FREDIA J. TITUS ("Titus")  
TRAUGHBER OIL CORP., an Oregon corporation, ("TOCO")  
BARBARA DEAN ENSMINGER and DEAN BROOKS WARNER, ("Lessors")

**RECITALS**

A. On November 27, 1988, Titus, as the Lessees, entered into a Ground Lease with Barbara Dean Ensminger and Dean Brooks Warner, as the Lessors (hereafter the "Lease") of the real property described as:

Lots 2, 3, 4 and the N1/2 of Lot 5, Block 207  
Mills Second Addition to the City of Klamath  
Falls, Oregon (hereafter the "Premises")

A copy of the Lease is attached hereto as Exhibit "1" and incorporated herein by reference; and

B. Titus desires to assign its rights under the Lease to TOCO and TOCO desires to assume Titus's obligations under the Lease, conditioned upon the consent of Lessors to such assignment and the agreement of Lessors to modify the Lease as provided for herein.

NOW, THEREFORE, in consideration of mutual promises set forth herein, the parties agree as follows.

**ASSIGNMENT****Section 1. Assignment and Assumption**

**1.1 Assignment.** Titus hereby assigns to TOCO all its rights, title, and interest in, under, and to the Lease and the Premises effective as of January 1, 2000 (the "Effective Date").

**1.2 Assumption.** TOCO hereby accepts the assignment and assumes and agrees to perform all obligations of Titus under the Lease, in strict accordance with the terms of the Lease, from and after the Effective Date.

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**Section 2. Status of Lease and Rent; Property Removal**

**2.1 Status of Lease.** Titus represents and warrants that the Lease is in full force and effect in accordance with its terms, that the Lease has not been amended or modified and that Titus is not in default of the Lease.

**2.2 Status of Rent.** Titus represents and warrants that the basic rent under the Lease is currently \$ 1000 per month and that all rent has been paid under the Lease through JANUARY 1, 2000.

**Section 3. Miscellaneous**

**3.1 Condition of Assignment.** This Assignment is conditioned upon the prior or simultaneous closing of the sale of the assets of the business known as "Jim's Detail Plus", which is located upon the Premises, from Titus Enterprises, Inc., an Oregon Corporation and James R. Titus and Fredia J. Titus to John Moss and Georgia Moss, or assigns, in accordance with the provisions of an Earnest Money Agreement entered into between such parties on September 23, 1999. In the event such transaction does not close, this Assignment and the following Consent and Modification are not valid.

**3.2 Attorney Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Assignment or with respect to any dispute relating to this Assignment, the prevailing party shall be entitled to recover from the losing party its attorney fees, paralegal fees, accountant fees, and other expert fees, and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount of fees shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

**3.3 Notices.** From and after the Effective Date, the Lessee's address for all notices shall be:

Traughber Oil Company  
Attention: John Moss  
PO Box 6869  
Bend, OR 97708

With a copy to: Jim N. Slothower  
Attorney at Law  
PO Box 351  
Bend, OR 97709

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**3.4 Further Instruments.** Each party agrees to execute such further instruments as may be reasonably required to consummate the transactions contemplated by this Assignment, as long as the terms thereof are fully consistent with the terms of this Assignment.

**LESSORS' CONSENT  
AND MODIFICATION OF GROUND LEASE**

**Section 4. Consent to Assignment.** Lessors hereby consent to the assignment of the Lease in accordance with, and subject to, the terms, conditions, and covenants of the foregoing Assignment and the following provisions regarding modification of the Lease and hereby agree to release James R. Titus and Fredia J. Titus from all further liability thereon and to substitute Traugher Oil Company, Inc. in their place.

**Section 5. Modification of Ground Lease.** As consideration for TOCO assuming the obligations of Titus under the Lease, and for other valuable consideration, Section 15.1 of the Lease is hereby deleted and the following is substituted in its place:

**15.1 Restriction on Transfer.** Lessors shall not, at any time prior to the termination date of this Lease, including any renewal term, sell, contract to sell, transfer, exchange, grant an option to sell or lease, or otherwise dispose of the Premises without first offering the Premises to Lessee, 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 Premises. Additionally, should Lessors receive from a third party a bona fide offer to purchase the Premises (hereinafter called the "Third Party Offer") which Lessors are prepared to accept, Lessors shall provide a copy of the Third Party Offer to Lessee.

**15.2 Acceptance of Offer.** Lessee shall have a period of thirty (30) days, following the giving of either Lessors' Offer or the Third Party Offer, to accept Lessors' Offer or purchase the Premises on the same terms as the Third-Party Offer, as the case may be, by giving Lessors written notice of acceptance of Lessors' Offer or of Lessee's intent to purchase the Premises in accordance with the terms of the Third Party Offer. If the Lessors' Offer is accepted, the parties shall be obliged to close the sale in accordance with the terms of the Lessors' Offer. If a bona fide Third-Party Offer is delivered to Lessee and Lessee notifies Lessors of its intent to purchase the Premises in accordance with the terms of the Third Party Offer, Lessee shall be obliged to close the sale in accordance with the terms of the Third Party Offer. Closing shall occur within thirty (30) days following notice of acceptance or within such longer closing period as may be specified in the Lessors' Offer or the Third Party Offer, as the case may be.

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**15.3 Sale to Third Party.** If Lessee does not accept Lessors' Offer or notify Lessors of its intent to purchase the Premises in accordance with the Third Party Offer, as the case may be, Lessors may sell the Premises to any other party, provided that such sale must be consummated (a) within 60 days following the earlier of the expiration of the acceptance period for the Lessors' Offer or the Third Party Offer; or the date of any written rejection of either offer by Lessee, and (b) for and upon the same price, terms, and conditions as those specified in the Lessors' Offer or the Third Party Offer, as the case may be. If such a sale to a third party is consummated, Lessee's rights under this Lease shall continue and be binding upon such third party purchaser.

**Section 6. Binding Effect.** Except as modified herein, all the provisions of the Lease shall remain in full force and effect. This Assignment and Modification shall be binding upon and shall inure to the benefit of each of the parties hereto, their respective heirs, executors, administrators, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

TRAUGHBER OIL COMPANY, INC.

By: John H. Moss, President

James R. Titus

Fredia J. Titus

LESSORS: SUBJECT TO LEASE PAYMENTS BEING  
ADJUSTED TO CPI AS PER SECTION 3.1 OF THE  
GROUND LEASE EFFECTIVE JANUARY 1, 2000. OR  
Barbara Dean Ensminger  
Barbara Dean Ensminger

Dean Brooks Warner  
Dean Brooks Warner DBW

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~~PAY THE REAL PROPERTY TAX OWED BY THE  
LESSOR IN SECTION 5.1~~  
NEW payment will be 1,188.00 per month beginning with  
LEASE payment due on Jan 1, 2000.

STATE OF OREGON,

County of KLAMATH

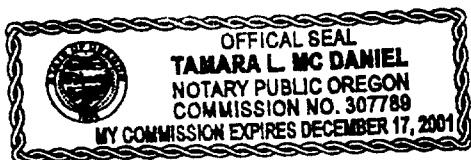
ss.

FORM No. 23—ACKNOWLEDGMENT.  
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Portland, OR 97204 © 1992

BE IT REMEMBERED, That on this 12th day of JANUARY, 19 2000,  
before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within  
named JAMES R. TITUS AND FREDIA J. TITUS

known to me to be the identical individual..... described in and who executed the within instrument and  
acknowledged to me that THEY executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed  
my official seal the day and year last above written.



*Tamara L. McDaniel*  
Notary Public for Oregon

My commission expires 12-17-01

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After Recording Return To:GE CAPITAL Loan No. 001-0005428-001

Michael D. Rist., Esq.  
Jenkins & Gilchrist, P.C.  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202-2711

### AGREEMENT REGARDING GROUND LEASE

THIS AGREEMENT REGARDING GROUND LEASE (this "Agreement") is made and executed this 11 day of January, 2000, by BARBARA DEAN ENSMINGER and DEAN BROOKS WARNER, each individuals (collectively "Landlord"), in favor of GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION, a Delaware corporation ("Lender");

### RECITALS:

A. Landlord is the owner of the real property in Klamath County, Oregon, which is described on Exhibit "A" attached hereto and made a part hereof for all purposes, and all rights, privileges and appurtenances thereto (collectively, the "Property"). Pursuant to a certain Ground Lease (the "Lease") dated as of November 27, 1988, Landlord leased the Property James R. Titus and Frieda J. Titus, and such Lease was assigned to TRAUGHBER OIL CO., an Oregon corporation ("Tenant"), who has constructed or intends to construct certain buildings and other improvements upon the Property (the "Improvements").

B. Tenant has requested that Lender advance one (1) or more loans (the "Loans") to Tenant to be secured, in part, by the lien and provisions of a certain line of credit leasehold deed of trust or mortgage (the "Mortgage"), covering the Improvements, all of Tenant's right, title and interest under the Lease, the equipment described on Exhibit "B" attached hereto and made a part hereof for all purposes and certain other assets and rights of Tenant. The collateral covered by the Mortgage is collectively called the "Mortgaged Property." The Mortgage and all of the other documents and instruments which evidence or secure the Loans are sometimes collectively called the "Loan Documents".

C. As a condition to Lender's agreement to advance the Loans to Tenant, and as a material inducement to Lender to do so, Lender has required that Tenant obtain this Agreement for the benefit of Lender.

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NOW, THEREFORE, for and consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Landlord hereby agrees as follows:

1. Default by Tenant. Landlord hereby agrees to deliver written notice to Lender of any default by Tenant under the Lease, which written notice shall specifically describe each alleged default of Tenant. Following Lender's receipt of any such notice, Lender shall have the right, but shall not be obligated, to cure any such default of Tenant as follows:

(a) within fifteen (15) days after Lender's receipt of a default notice from Landlord in the event the alleged default is a failure by Tenant to pay any of its monetary obligations under the Lease; or

(b) within thirty (30) days after Lender's receipt of a default notice from Landlord in the event the alleged default is not a failure by Tenant to pay any of its monetary obligations under the Lease; provided, however, that if any default described in this Section 1(b) cannot reasonably be cured by Lender within thirty (30) days, Landlord agrees that the thirty (30) day period shall be extended for so long as Lender is diligently attempting to either cure such default or to acquire Tenant's interest under the Lease.

Landlord acknowledges and agrees that Lender shall not be required to pay any default interest or late charges to cure any monetary default of Tenant under the Lease.

2. Acquisition of Property by Lender. If Lender shall become the owner of the Mortgaged Property as a result of a foreclosure of the Mortgage, or if the Mortgaged Property shall be sold by reason of a foreclosure of the Mortgage to any third party, or if the Mortgaged Property shall be transferred by deed-in-lieu of foreclosure (any such foreclosure or deed-in-lieu of foreclosure being collectively called a "Foreclosure"), then the Lease shall, at the option of Lender or the third party who acquires the Mortgaged Property at a Foreclosure (Lender and any such third party being collectively called the "Successor Owner") continue as a direct lease between Landlord and the Successor Owner.

3. No Liability. In the event the Successor Owner acquires the Mortgaged Property, the Successor Owner shall not be:

(a) liable or responsible for any act or omission of Tenant;

(b) subject to any claims or defenses which Landlord might have against Tenant;

(c) liable or responsible for any default by Tenant under the Lease or obligated to cure any prior default by Tenant under the Lease (except that the Successor Owner shall be obligated after its acquisition of the Mortgaged Property, to cure any monetary defaults by Tenant under the Lease):

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(d) liable or responsible for any agreement of Tenant to indemnify or defend Landlord, or to reimburse Landlord for any sums expended by Landlord;

(e) bound by any amendment to the Lease not approved by Lender in writing;  
or

(f) required to occupy or operate in, or to cause tenants to occupy or operate in, the Mortgaged Property.

4. Representations by Landlord. Landlord hereby represents and warrants the following to Lender: Except as provided in Exhibit "C" attached hereto and made a part /hereof for all purposes,

(a) / The Lease has not been modified, altered or amended, and the Lease is in full force and effect;

(b) Tenant is not in default of any of its obligations under the Lease and no events have occurred which, with notice, the passage of time or both, would constitute a default in any of Tenant's obligations under the Lease;

(c) Landlord has no knowledge of any prior assignment or pledge of Tenant's interest in the Lease;

(d) All agreements and understandings between Landlord and Tenant relating to the Property are set forth in the Lease;

(e) All of the obligations under the Lease which have arisen prior to the date hereof regarding the construction of the Improvements have been satisfied;

(f) Landlord has not mortgaged, accepted any offer to purchase from any person or entity, or otherwise encumbered its interest in the Property;

(g) Landlord has no current right to terminate the Lease based on any acts or omissions of Tenant as of the date hereof;

(h) Landlord has all requisite power and authority to execute and deliver this Agreement; and

(i) Lessee has fully complied with Section 6 of the Lease as it relates to alterations and visibility.

5. Covenants and Agreements of Landlord. Landlord hereby covenants to and agrees with and for the benefit of Lender as follows:

(a) The Lease shall not be amended, modified or terminated after the date hereof without Lender's prior written consent (except for any termination resulting from



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a default by Tenant under the Lease which is not cured by Tenant in accordance with the terms of the Lease or by Lender in accordance with the terms of this Agreement);

(b) The Successor Owner shall have the right to renew the term of the Lease pursuant to Section 2.2 of the Lease;

(c) Landlord shall not mortgage or encumber the Property or any of its interests therein without Lender's prior written consent, except for mortgages and other encumbrances which are subject and subordinate to the Mortgage;

(d) In the event of any termination of the Lease (including, without limitation, any termination pursuant to the Federal Bankruptcy Code), (i) Lender shall have the right to request that Landlord enter into a new lease agreement with Lender or its designee within forty-five (45) days after the date on which Lender receives written notice of the termination of the Lease, and (ii) Landlord and Lender (or its designee) shall enter into such new lease agreement on the same terms and conditions as the Lease, as modified by this Agreement, within thirty (30) days after Landlord receives Lender's request;

(e) Notwithstanding anything to the contrary contained in the Lease, in the event that any of the Mortgaged Property is damaged or destroyed by reason of fire or any other casualty insurable under an "All Risks of Physical Loss" insurance policy, then all such compensation, awards, damages, rights of actions or insurance proceeds payable to Tenant under the Lease (the "Proceeds") are hereby assigned to Lender and Landlord hereby waives all right to claim or recover any of the Proceeds to the extent of the outstanding principal balance and any accrued interest remaining unpaid to Lender on the Loans.

(f) In the event the Successor Owner acquires the Mortgaged Property, the obligations of the Successor Owner under the Lease shall be nonrecourse, and Landlord shall look solely to the interest of the Successor Owner in the Mortgaged Property for the recovery of any judgment against the Successor Owner, and Landlord hereby covenants and agrees not to bring any action or suit seeking to impose liability on the Successor Owner beyond its interest in the Mortgaged Property; and

(g) Until the Loan is paid in full, Landlord shall have no rights or interests in or to the rents, revenues, income, proceeds and profits from any sublease by Tenant of the Property.

6. Waiver of Liens. Landlord hereby waives and relinquishes in favor of Lender, its successors and assigns, for the term of the Loans, all rights, claims and demands of every kind against the Mortgaged Property, including but not limited to the right of foreclosure, levy, execution, sale and distraint for unpaid rent or other rights arising under the real property law or by contract which Landlord now has or may hereafter acquire with respect to any of the Mortgaged Property presently or hereafter financed or leased by Lender.

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7. Notice of Leasehold Mortgage. This Agreement shall constitute notice to Landlord of the Mortgage. Lender's address for notice is as set forth below.

8. Notices. All notices be given under this Agreement (and under the Lease to Lender) shall be in writing and shall be given in accordance with the requirements of Section 16.2 of the Lease. The respective addresses for Landlord and Lender are as follows:

Landlord: 1915 Etna Street  
Klamath Falls, Oregon 97603

Lender: General Electric Capital Business  
Asset Funding Corporation  
10900 N.E. 4th, Suite 500  
Bellevue, Washington 98004  
Attn: Angelina Yokoyama

The address to which any notice or other writing must be sent to either party hereto may be changed upon written notice given by such party as provided in the Lease.

9. Conflict. In the event of any conflict between the terms of this Agreement and any of the terms of the Lease, the terms of this Agreement shall govern and control.

10. Further Acts. Landlord agrees to execute and deliver to Lender from time to time such reasonable certifications as Lender may request with respect to the performance by Landlord and Tenant of their respective obligations under the Lease. In addition, Landlord its agrees to execute and deliver to Lender from time to time such other reasonable documents and instruments as may be requested in order to effectuate the terms of this Agreement.

11. Illegal or Invalid Provisions. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining terms and provisions of this Agreement shall not be affected thereby, and in lieu of such illegal, invalid or unenforceable term or provision there shall be added automatically to this Agreement a legal, valid and enforceable term or provision as similar as possible to the term or provision declared illegal, invalid, and unenforceable.

12. Governing Law. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Oregon.

13. Captions. The captions herein are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Agreement or any particular paragraph or section hereof, or the proper construction hereof.

14. Benefit to Lender. Landlord acknowledges that Lender is entitled to the benefit of all provisions of the Lease which are applicable to a "Leasehold Mortgagee".

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15. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

16. Release. Upon payment of the Loans, this Agreement shall be released of record by Lender at Tenant's expense.

EXECUTED, ACKNOWLEDGED AND DELIVERED on the date first above written.

LANDLORD:

Barbara Dean Ensminger  
**BARBARA DEAN ENSMINGER,**  
 an individual

Dean Brooke Warner  
**DEAN BROOKS WARNER,**  
 an individual

THE STATE OF OREGON §  
 COUNTY OF KUMATH §  
 §  
 §

This instrument was acknowledged before me on the 11 day of January, 2000. by **BARBARA DEAN ENSMINGER**, an individual.



Karen A. Baker  
 Notary Public in and for the  
 State of OREGON

Printed Name of Notary Public:

KAREN A. BAKER

My Commission Expires:

9-28-01

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THE STATE OF OREGONCOUNTY OF KLAMATH

This instrument was acknowledged before me on the 11 day of January, 2000, by DEAN  
BROOKS WARNER, an individual.



Karen A Baker  
Notary Public in and for the  
State of OREGON

Printed Name of Notary Public:  
KAREN A. BAKER

My Commission Expires:  
9-28-01

State of Oregon, County of Klamath  
Recorded 1/12/00, at 2:50 p.m.  
In Vol. M00 Page 1131  
Linda Smith,  
County Clerk Fee \$ 81<sup>00</sup>