

'02 MAR 27 PM 1:32

*K57443*

**ASSIGNMENT AND ASSUMPTION OF  
SUBLESSOR'S INTEREST IN SUBLEASE AGREEMENT**

Burger Shoppe  
6253 South Sixth Street, Klamath Falls, Oregon 97603

THIS ASSIGNMENT AND ASSUMPTION OF SUBLESSOR'S INTEREST IN SUBLEASE ("Assignment") is made and entered into as of the 24th day of March, 2002, by and between **JELD-WEN, INC.**, an Oregon corporation ("Assignor"), and **HOME DEPOT U.S.A., INC.**, a Delaware corporation ("Assignee").

**RECITALS**

- A. Simultaneously with the execution and delivery of this Assignment, Kristi A. Buck (formerly "Kristi A. Sutphin") (successor-in-interest to Viola T. Buck) will transfer to Assignee fee title to certain real property ("**Property**") and improvements thereon ("**Improvements**") located in the City of Klamath Falls, County of Klamath, State of Oregon, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference.
- B. Assignor is the Sublessor under that certain Sublease Agreement made as of April 5, 2001 between Assignor and Richard and Diana Saltenberger, as Sublessee thereunder ("**Sublease**"), affecting an approximate 6,600 square foot portion of the Property, which Sublease is attached hereto as **Exhibit B** and is incorporated herein by this reference.
- C. Assignor now desires to assign to Assignee its interest in the Sublease and Assignee desires to accept such assignment upon the terms and conditions of this Assignment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

- 1. Assignor hereby assigns and transfers to Assignee all of its right, title, and interest in and to the Sublease and Assignee hereby accepts the foregoing assignment and assumes the obligations of Assignor pursuant to the Sublease arising from and after the date hereof.
- 2. Assignor covenants and agrees to indemnify, defend, and hold Assignee harmless from and against any actions, suits, proceedings, or claims, and all costs and expenses (including, without limitation, reasonable attorneys' fees and costs at trial or any similar proceeding and on any appeal therefrom)

106666.0146/895166.2

*K151*

incurred in connection therewith and based upon or arising out of any breach or alleged breach of the Sublease by Assignor occurring or alleged to have occurred before the date of this Assignment.

3. Assignee covenants and agrees to indemnify, defend, and hold Assignor harmless from and against any actions, suits, proceedings, or claims, and all costs and expenses (including, without limitation, reasonable attorneys' fees and costs at trial or any similar proceeding and on any appeal therefrom) incurred in connection therewith and based upon or arising out of any breach or alleged breach of the Sublease by Assignee or arising in connection with the Sublease occurring or alleged to have occurred from and after the date of this Assignment.
4. Assignor shall remit to Assignee all amounts in the form of pre-paid rentals, security deposits, or otherwise, received from the Sublessee under the Sublease and in its possession as of the date of this Assignment. This obligation of Assignor to Assignee may be fulfilled as a part of the closing of the purchase and sale between Assignor and Assignee of other real property which is in the vicinity of the Property.
5. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors-in-interest, and assigns. It shall be governed by and construed under the laws of the State of Oregon.
6. This Assignment may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.
7. In the event either party hereto fails to perform any of its obligations under this Assignment, or in the event a dispute arises concerning the meaning or interpretation of any provision of this Assignment, the defaulting party, or the party not substantially prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or in establishing its rights hereunder including, without limitation, court costs and reasonable attorneys' fees and costs.

**[Signature page follows.]**

17963

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

**ASSIGNOR:**

JELD-WEN, INC.,  
An Oregon Corporation

By: 

Name: Mark Blanchat

Title: Vice-President

**ASSIGNEE:**

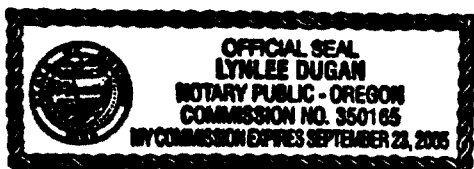
HOME DEPOT U.S.A., INC.,  
A Delaware Corporation

By: 

Daniel R. Hatch, Senior Corporate Counsel,  
Western Region

STATE OF OREGON           )  
   ) ss.  
 County of Klamath )

This instrument was acknowledged before me on March 26, 2002 by  
Mark Blanchat as Vice President of  
 Jeld-Wen, Inc., an Oregon corporation.



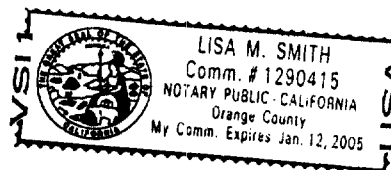
Lynlee Dugan  
 Notary Public for Oregon  
 My commission expires: 9-23-05

STATE OF CALIFORNIA    )  
   ) ss.  
 COUNTY OF ORANGE        )

On March 20, 2002, before me, Lisa M Smith  
 a Notary Public in and for said state, personally appeared Daniel R. Hatch, personally  
 known to me (or proved to me on the basis of satisfactory evidence) to be the person  
 whose name is subscribed to the within instrument, and acknowledged to me that he  
 executed the same in his authorized capacity, and that by his signature on the instrument  
 the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Lisa M Smith  
 SIGNATURE OF NOTARY PUBLIC



**EXHIBIT A**  
**Legal Description**

A tract of land situated in the Southwest One-Quarter of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the Center Section line of said Section 1, which bears South 87°50'28" West, 853.50 feet from the Center One-Quarter corner of said Section 1, evidenced by a 3/4" iron pipe; thence along said Center Section line, North 87°50'28" East, 147.92 feet; thence leaving said Center section line, South 04°54'24" East, 671.93 feet to a point on the Northeasterly right-of-way of the Klamath Falls—Lakeview Highway; Thence along said right-of-way, North 46°09'38" West, 15.43 feet to a point of Spiral Curve left at Engineer's centerline station 150+22.86 (BK), Said Spiral curve defined at Highway Centerline as 500.00 Feet in Length of Arc, an "a" value of 0.65 and a "S" value of 8°05'51"; thence along the arc of a 44.00 foot offset right from said center spiral to the left (the long chord of which bears North 46°55'34" West, 265.93 feet) to a point of non-tangency on the East line of that property described in Deed Volume M91 Page 21998, Deed Records of Klamath County, Oregon; thence leaving said right-of-way and along said East line, North 00°00'58" East, 471.46 feet to the Point of Beginning.

Said tract contains 2.251 acres, more or less.

**TOGETHER WITH:**

A tract of land situated in the South One-Half of the Northwest One-Quarter of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath Count Oregon, being more particularly described as follows:

Beginning at a point on the Southerly line of Simmers Avenue, which bears South 89°05'07" West, 853.00 feet from the Center One-Quarter corner of said Section 1, evidenced by a 3/4" iron pipe; thence along said southerly line, North 89°05'07" East, 146.51 feet; thence leaving said Southerly line, South 04°54'24" East, 15.36 feet to a point on the Center Section line of said Section 1, thence along said Center Section line, South 87°50'28" West, 147.92 feet to a point on the East line of the property described in Deed Volume M91 Page 21998, Deed Records of Klamath County, Oregon; thence along said East line, North 00°00'58" East, 18.53 feet to the Point of Beginning.

Said tract contains 2492 square feet (0.057 acres), more or less.

Bearings are based upon the centerline of the Klamath Falls—Lakeview Highway per Record of Survey number 6632 Filed in the office of the Klamath County Surveyor.

17966

**EXHIBIT B**

**Copy of Sublease**

Exhibit "B"  
Sublease Agreement

17967

**SUBLEASE AGREEMENT**

This sublease ("Sublease") is made as of April 5, 2001, by and between JELD-WEN, inc., an Oregon Corporation ("Sublessor") and Richard and Diana Saltenberger, ("Sublessee") (together, the "Parties"). Accordingly, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**Section I - SUBLEASE PREMISES**

Subject to the following terms and conditions, Sublessor hereby leases to Sublessee and Sublessee hereby leases from Sublessor approximately 6,600 square feet located at 6253 South Sixth Street, Klamath Falls, OR 97603 ("Premises") as outlined in Exhibit A attached hereto and incorporated herein by this reference.

It is hereby acknowledged and understood by the Parties that Sublessor is not the owner of the Premises, but is currently leasing the Premises. The Premises is subject to a master lease between Viola Buck subsequently assigned to Dallas and Kristi Sutphin ("Lessor") and Trendwest Development subsequently assigned JELD-WEN, inc. ("Lessee") and is attached hereto as Exhibit B ("Master Lease").

**Section II - TERM**

The term of this Sublease ("Term") shall commence on May 1, 2001, and shall end on April 30, 2006. In no event will the ending Term of this Sublease extend beyond the ending term of the Master Lease.

**Section III - PARTIES' OBLIGATIONS**

**Sublessor**

Sublessor agrees to deliver the Premises in as is condition but clean and free of debris. Sublessor makes no representations or warranties whatsoever except as set forth in this Sublease.

**Sublessee**

Except as provided herein, the Sublease is made with the intent of passing along all of the Sublessor's obligations as lessee under the Master Lease and the Sublessee hereby agrees to accept such obligations and indemnify Sublessor for such obligations, including, without limitation, all covenants, duties, and obligations of the Sublessor as per the terms and provisions in the Master Lease. Sublessee's obligations hereunder are to Sublessor. It is specifically understood and agreed that JELD-WEN, inc. is not relieved of any liability under the terms and conditions of the original Master Lease. The Sublessee shall be obligated only to JELD-WEN, inc. until the end of the Term.

17968

#### Section IV - RENT

Sublessee hereby agrees to pay to Sublessor the following monthly rental amounts during the term of this Sublease:

---

May 1, 2001 to April 30, 2002	\$625.00 per month
May 1, 2002 to April 30, 2003	\$644.00 per month
May 1, 2003 to April 30, 2004	\$663.00 per month
May 1, 2004 to April 30, 2005	\$683.00 per month
May 1, 2005 to April 30, 2006	\$703.00 per month

Sublessee hereby also agrees to pay to Sublessor all of the other rental amounts due under the Master Lease.

Such rental and other payments shall be due directly to Sublessor and nonpayment to Sublessor shall constitute a breach of this Sublease.

Payments for rent and for any other expenses or charges pursuant to this paragraph shall be paid to Sublessor on or before the first day of each month during the Term of this Sublease. Any payments not received within four days of when due will carry an interest rate of the greater of the maximum legal interest rate or 18% per year from due date.

#### Section V - INSURANCE

During the Sublease Term, Sublessee shall maintain a policy of commercial general liability insurance in form and content as described in the Master Lease and shall provide Sublessor proof of such insurance prior to occupancy. Said endorsement shall name both Sublessor and Lessor as additional insured parties. Said endorsement shall also specify that in order to cancel the policy, said cancellation is subject to thirty (30) days written notice, with said cancellation notice to also be delivered to Sublessor and Lessor with same thirty (30) days notice.

#### Section VI - SECURITY DEPOSIT

To secure Sublessee's compliance with all terms of this Sublease and the Master Lease, Sublessee has previously deposited with Sublessor the total sum of \$667.00 as a deposit. The deposit shall be paid in full upon execution of this Sublease. The security deposit will be returned to Sublessee within 30 days of the end of the Sublease, subject to offsets for Sublessee's failure to comply with the terms of this Sublease. Sublessor shall not be required to pay Sublessee interest on the security deposit.

#### Section VII - CONTINGENCIES

This Sublease is contingent upon the approval of this Sublease by Lessor. In the event Sublessor provides written notice of failure to receive satisfaction to this contingency, the Sublessor may cancel this Sublease without damage and neither party hereto shall have any further obligation to the other hereunder.



17969

### Section VIII - BROKER REPRESENTATION

Sublessor and Sublessee represent and warrant to each other that no broker or finder has been engaged by it in connection with any of the transactions contemplated by this Sublease and Sublessor and Sublessee each agree to indemnify and hold each other harmless from and against the claims of any and all brokers or other intermediaries claiming to have had any dealings, negotiations or consultations with the indemnifying party in connection with this Sublease.

### Section IX - NOTICES

Any notices required or permitted to be given hereunder shall be in writing and shall be given by personal delivery or certified mail to Sublessee or to Sublessor at the addresses set forth below, or at such other address as either party may from time to time specify.

### Section X MISCELLANEOUS

1. Final and binding agreement. This Sublease binds not only the Parties but also their respective heirs, representatives, executors, administrators and successors and assigns for the benefit of the other party and its heirs, representatives, executors, administrators, successors and assigns.
2. Severability. If any court finds any of the provisions of this Sublease illegal, invalid, or otherwise unenforceable, the remaining terms will nevertheless remain in full force.
3. Entire agreement. The terms expressed in this Sublease comprise the entire agreement. Such terms supersede all agreements and communications between the Parties prior to and contemporaneous with the execution of this Sublease.
4. Knowing and voluntary acceptance of Agreement. The Parties acknowledge that they have each carefully read this Sublease, understood its contents, consulted with an attorney or had the opportunity to consult with an attorney and hereby voluntarily accepts the terms of this Sublease. The Parties also acknowledge that this Sublease was drafted by their own attorney in conjunction with the other Party's attorney and that no Party had more control than the other did in drafting the Sublease.
5. Attorney fees. In the event legal action is taken to enforce this Sublease, or any provision thereof, the prevailing Party in such action shall be entitled to receive its reasonable attorney's fees, in addition to all other costs or charges allowed, which shall be fixed by the court or courts in which such action, including an appeal thereon, is tried, heard or decided.
6. Governing law and forum. The laws of the State of Oregon shall govern this Sublease and the venue for any disputes shall be the provincial court nearest to (Klamath Falls, Oregon).
7. Execution in counterparts. This Sublease and accompanying documents may be signed in several counterparts. The signature of one party on any counterpart shall

17970

bind such party just as if all parties had signed that counterpart. Each counterpart shall be considered an original. All counterparts of the Sublease shall together constitute an original agreement,

Executed as of the 17<sup>th</sup> day of <sup>May</sup> April, 2001.

Sublessor:

Sublessee:

JELD-WEN, Inc.

By: [Signature]

By: [Signature]

Stephen L. Cook Jason de Vries

By: [Signature]

Its: Real Estate Manager

Its: \_\_\_\_\_

Date: 10/24/2001

Date: \_\_\_\_\_

3250 Lakeport Blvd

Address: \_\_\_\_\_

Klamath Falls, OR 97601

Phone: (541) 884-3431

Phone: ( ) \_\_\_\_\_

Fax: (541) 884-2231

Fax: ( ) \_\_\_\_\_

We, Dallas and Kristi Sutphin consent to the above Sublease without modifying any term or provision of the Master Lease as between Lessor and Sublessor.

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Exhibit "B"  
to Sublease

GROUND LEASE

THIS AGREEMENT, made this 12 day of April, 1981, by and between VIOLETT T. BUCK, a single woman, herein called Lessor, and RONALD W. BOEHLKE as to an undivided one-sixth interest; KATHERINE H. BOEHLKE as to an undivided one-sixth interest; ROBERT J. CAMPBELL as to an undivided one-sixth interest; JOAN C. CAMPBELL, as to an undivided one-sixth interest; and LLOYD M. FARLEY as to an undivided one-third interest, herein called Lessees; provided however, that all agreements and obligations of the Lessees and their successors and assigns herein contained shall be and are joint and several agreements and obligations.

WITNESSETH

That said Parties for the considerations herein contained agree by and between themselves as follows:

ARTICLE ONE

1.1

Lessor owns the unimproved Tract of Land fronting on the Oregon State Highway, which is commonly referred to as South 6th Street, which contains 95,775 square feet more or less, and which is more particularly described in Exhibit A attached hereto and made a part hereof and is sometimes referred to hereafter as the Leased Premises or Property.

1.2

The Lessees have inspected said Leased Premises and have satisfied themselves as to its condition, the location of its boundaries and its total area and accept the same in its present condition except for the zone change hereafter provided.

1.3

Lessees wish to lease said Tract of Land for a term of 33 years with two options to renew, each option being for an additional term of 33 years.

1.4

Lessor agrees to join in the application for a Zone Change by Lessees but shall have no other responsibility or liability in connection therewith and all costs and expenses of every kind and nature shall be borne by the Lessees and Lessees shall indemnify and hold the Lessor harmless therefrom.

LEASE - Page 1

ONG

## 1.5

The rentals herein specified are to be absolutely net rentals to the Lessor and that during the term of this Lease and any and all renewals or extensions of same all costs, expenses, and obligations of every kind and nature whatsoever, relating to the Leased Premises, or any improvements thereon, or any businesses, activity, use or occupancy in connection therewith which may arise or become due during the terms of this Lease, including, without limitation by this recital: all Federal, State, County and Municipal taxes, operation, maintenance and construction charges, bonds, warrants, indebtedness and interest, liens, levies, assessments, special assessments, permit, franchise, license, use, privilege, business, occupancy and service fees, rentals and charges and surcharges of every kind and nature, including without limitation those of any Political body, subdivision, agency, district, commission or authority and those of any Landowner or Corporate or Private district, association, or corporation or utility whether the same be general or special, ordinary or extraordinary, foreseen or unforeseen, shall be promptly paid by the Lessees when the same first become payable and before any interest, late charges or penalties become due thereon and the Lessor shall be indemnified and held harmless by the Lessees.

Provided however, that Lessees shall not be responsible for any estate or inheritance taxes of Lessor or for any mortgages or other hypothecations which may hereafter be placed upon the premises by the affirmative act of the Lessor or for any judgments, attachments, liens, distraints or warrants which are the personal obligation or liability of the Lessor and which become liens or encumbrances on the Leased Premises by operation of law.

The Lessor shall have no expenses or costs whatsoever in connection with the Leased Property or this Lease or any renewal or extension of it except as otherwise expressly provided herein.

## ARTICLE TWO

## 2.1

Lessor hereby leases unto the Lessees and the Lessees hereby lease from the Lessor said Leased Premises for a term of 11 years from the 30th day of June, 1981.

## 2.2

If the Lessees have fully paid and performed this Lease and are not then in default and this Lease has not theretofore been terminated or ended for any reason or by any cause whatsoever, the Lessees shall have the right to renew this Lease for an additional term of 33 years.

Said renewal shall be exercised only by the Lessees delivering to Lessor their written Notice of Renewal not earlier than 365 days prior to the end of the term and no later than 120 days prior to the end of the term. Time and the exact manner specified for the giving of said Notice are of the Essence of this Agreement.

## 2.3

If the Lessees exercise said first Right of Renewal and have fully paid and performed this Lease during said additional term and are not in default and this Lease has not theretofore been terminated or ended for any reason or by any cause whatsoever, the Lessees shall have the right to renew this Lease for a second additional term of 33 years.

Said renewal shall be exercised only by the Lessees delivering to Lessor their written Notice of Renewal not earlier than 365 days prior to the end of the second term and not later than 120 days prior to the end of the term. Time and the exact manner specified for the giving of said Notice are of the essence of this Agreement.

## 2.4

The Lessees jointly and severally agree that they will fully observe and perform each and every term and condition of this Agreement to be observed or performed by Lessees and that they will pay the Lessor the rental for said Leased Premises as follows:

(a) The Lessees shall pay Lessor a lump-sum payment of \$13,000.00 as a prepayment on the basic monthly rent of \$1,200.00 a month to enable Lessor to

1 pay Lessor's closing costs incurred in connection with this Lease and Lessees  
2 shall be credited with \$200.00 of said prepayment on each monthly rental instal-  
3 lment for 65 months or for such period required to consume said \$13,000.00  
4 credit.

5 (b) At the end of the 6th month and at the end of each 12 months there-  
6 after during the term of this Lease and any additional term of the Lease or  
7 while the Lessees continue in possession of the Leased Premises, the rental  
8 shall be adjusted up or down by the ratio of the change in the Consumer Price  
9 Index for Portland, Oregon (Bureau of Labor Statistics, U. S. Department of  
10 Labor) from the date said rental period commenced to the end of such period.  
11 The percentage of change shall be computed on the rental for said preceding  
12 rental period and shall be added to or subtracted from it. Provided however, if  
13 the cost of living annual adjustment for such period is more than 10%, the rent-  
14 al shall be increased by only 10% plus 50% of said excess over 10%. Provided  
15 further, the rental shall never be less than \$1,200.00 per month. Lessor shall  
16 give Lessees notice in writing of such change as soon as said figures become  
17 available. If such Index shall cease to be available or shall fail to accurately  
18 ly reflect the local cost of living, the Parties shall mutually agree upon such  
19 other index or criteria to be used to determine the change of the cost of living  
20 during such period.

21 (c) The monthly rental payment shall be due on the 30th day of each  
22 month commencing with the 30th day of June, 1981, except that the February pay-  
23 ment shall be made on the last day of the month.

### 24 ARTICLE THREE

#### 25 3.1

26 The Lessees may improve and use said premises for any purpose permitted  
27 by law and the applicable zoning and building and use restrictions in conformi-  
28 ty with all applicable laws, ordinances, rules and regulations and in such a  
29 manner as not to create a nuisance.

#### 30 3.2

31 It is understood and agreed that the Lessees will need to borrow the  
32 money to construct the improvements on the Leased Premises and the Lessor hereby

1 agrees to subordinate Lessor's interest in the Leased Premises to the Mortgage  
2 or Trust Deed given by Lessees to their Lender on the following terms and condi-  
3 tions:

4 (a) The amount of the Mortgage shall not exceed the actual cost of con-  
5 structing the improvements situated on the Leased Premises or a maximum of 75%  
6 of the total value of the land and improvements, whichever is the most.

7 (b) Lessees may from time to time hypothecate and encumber this Lease  
8 and the leasehold interest. Lessor agrees to notify any lender of Lessees of  
9 any default by Lessees and to accord said lender all necessary time in order to  
10 remedy any such default. In the event any such default is not cured, Lessor  
11 agrees to recognize any such lender in the place and stead of Lessees and as  
12 Lessees until such time as the said lender assigns or sells its interest. Any  
13 default by Lessees or any subsequent assignee or successor in interest to Lessees  
14 is to be deemed cured if said lender brings the rent current and otherwise per-  
15 forms the obligations under the Lease after obtaining possession. In addition  
16 to the above, Lessor will join in executing any and all instruments which legal  
17 counsel for any lender on the security of Lessees' leasehold estate may reason-  
18 ably require in order to accomplish the same, provided that nothing herein shall  
19 be construed as obligating Lessor to incur any personal liability for repayment  
20 of any such loan.

21 3.3

22 The Lessees agree that all improvements constructed on the Leased Premi-  
23 ses shall either be constructed wholly and entirely on the Leased Premises and  
24 that no part of the improvements shall encroach or be constructed on any adjoin-  
25 ing premises or that the improvements shall be constructed in such a manner that  
26 a fair and proportionate share of the income can be identified and allocated  
27 to the Premises herein leased and the Lessees agree that all leases and other  
28 applicable agreements made by them will identify and allocate such fair, pro-  
29 rata share of the income to all of the property hereby leased to Lessees.  
30  
31  
32

## ARTICLE FOUR

## 4.1

Lessees shall have the right to alter, demolish, rebuild, construct and/or reconstruct any and all improvements they desire on the demised premises without restriction from Lessor, provided that any such alteration, demolition, rebuilding, construction and/or reconstruction shall not materially reduce the value or the rent production of the demised premises below the value and rent production immediately before such alteration, demolition, rebuilding, construction and/or reconstruction. Lessor shall cooperate with Lessees in obtaining any permits and in executing any documents required in connection with any such work or the maintenance of any improvements on the demised premises.

## 4.2

Lessees agree with Lessor that during the continuance of this Lease the Lessees will keep in good condition and repair the Leased Property and any and all improvements, buildings, furnishings, fixtures, and equipment which are constructed or placed upon the Leased Premises by the Lessees and will not suffer or permit any strip, waste, or neglect of any such improvements, buildings or other property and that the Lessees will maintain, repair, replace, paint and renovate such improvements, buildings and property as often as it may be necessary in order to keep the same in good condition and repair.

## 4.3

The Lessees shall promptly pay all contractors, labor and materialmen involved in any improvements, changes, alterations, remodeling or construction made in or upon the property and all Workmen's Compensation and other payroll taxes and withholdings so incurred or which are incurred in the business operations on said premises or the occupancy or use of said premises and shall not suffer or permit any liens, encumbrances, judgments, warrants, distraints, assessments, taxes, levies or charges whatsoever to be placed upon or to attach to or encumber said property or any part thereof or any interest therein, and Lessees shall not except as hereinbefore provided mortgage, or execute any trust deed, security agreement, financing statement or other hypothecation on said property or any part thereof or any interest therein. Provided however, that



1 Lessees may give financing statements or other security liens and encumbrances  
2 on any new equipment placed on the premises.

## 4.4

3  
4 The Lessees will keep all of the improvements, buildings and property  
5 on said Leased Premises insured against fire and other casualties covered by a  
6 standard policy of fire insurance with extended coverage endorsements in an  
7 amount not less than the full insurable value of said property with the loss  
8 payable to the Lessees and the Lessor as their respective interests may appear  
9 and certificates evidencing such policies shall be delivered to the Lessor.  
10 Lessees also agree that in the event of the destruction or damage of the build-  
11 ing, improvements or property or any part thereof, and as often as any building,  
12 improvements or property on said premises shall be destroyed, lost or damaged  
13 by fire, water, smoke, collision, explosion, earthquake, snow, freezing, flood-  
14 ing, lightning, storm, theft, vandalism, riot, casualty or negligence, the Les-  
15 sees shall rebuild, repair and replace the same in such manner that the build-  
16 ing or improvement so rebuilt and repaired, and the personal property so re-  
17 placed or repaired, shall be of the same or higher value as the said building  
18 or improvement and the personal property upon the demised premises prior to such  
19 damage or destruction and shall have the same rebuilt and ready for occupancy  
20 within 15 months from the date when the Lessees receive payment or make settle-  
21 ment with the Insurance Carriers for such loss. Provided however, such repairs,  
22 replacement or re-building must be completed within 5 years from the date of  
23 such loss regardless of whether settlement has been made with any insurance  
24 company or any insurance proceeds have been received.

## 4.5

25  
26 Lessees shall fully indemnify, defend and hold the Lessor harmless  
27 from any claim, loss or liability arising, resulting or occurring in whole or  
28 in part from, in or upon said Leased Premises, except actions of the Lessor, and  
29 Lessees shall carry public liability insurance in sums adequate to cover any  
30 probable claims, loss and liability which shall name both Lessor and Lessees  
31 as insureds and shall deliver a certificate of said insurance to Lessor. Lessee  
32 shall comply with the provisions and requirements of the Oregon Workmen's

1 Compensation Law and shall promptly pay all premiums or contributions required  
2 to continuously maintain coverage which will meet said requirements.

4 The Lessees shall fully and faithfully observe, perform and comply with  
5 all laws, ordinances, regulations, rules, orders, permits, licenses, restrictions  
6 and directions of proper governmental authorities concerning said Leased Premi-  
7 ses and any business or other activities conducted thereon and any occupancy  
8 thereof.

10       The Lessees shall fully and promptly pay, perform and observe each and  
11 every payment, term, condition and agreement herein contained on their part to  
12 be paid, performed or observed in the manner specified herein, time and such  
13 full and prompt payment, performance and observance being of the essence of  
14 this Contract.

10 If the Lessees shall fail, refuse or neglect to maintain, repair, re-  
11 place, paint, renovate, protect, keep and preserve the Leased Property and any  
12 and all improvements, buildings, furnishings, fixtures and equipment which are  
13 constructed or placed thereon or to pay, do or perform anything herein required  
14 to be paid, performed or observed by the Lessees, the Lessor may at Lessor's  
15 option cause the same to be done, performed or observed and to pay for the  
16 same or to loan or advance funds to the Lessees; and all such expenses, pay-  
17 ments, charges or advancements and also all rents due on this agreement shall  
18 be secured by this Lease agreement and the Land and other said Property and  
19 shall be a lien thereon and shall draw the highest legal rate of interest and  
20 the Lessees shall reimburse the Lessor for the same and for the interest ac-  
21 crued thereupon on demand and a failure by the Lessees to pay or reimburse the  
22 Lessor for same shall constitute a default upon this Agreement entitling the  
23 Lessor to assert and use any or all of the remedies herein provided for a breach  
24 or default.

32 The Lessor and the Lessor's employees and agents may enter into and

1 upon the Leased Premises at all reasonable times for the purpose of inspecting  
2 the same and any and all improvements, buildings, furniture, furnishings, fix-  
3 tures and equipment thereon, post notices and for the purpose of exercising  
4 any rights provided Lessor by this Lease or at law.

## 4.10

5  
6 The Lessees agree that at the expiration of this Lease, or upon any  
7 sooner termination of this Lease, the Lessees will peaceably and quietly deliver  
8 possession of the Leased Property and all improvements, buildings, furnishings,  
9 fixtures and equipment which have been placed, or constructed upon the premi-  
10 ses to the Lessor.

## 4.11

11  
12 In the event Lessees shall hold over and remain in possession of the  
13 Leased Property, or any part thereof, after the expiration of this Lease and  
14 any Renewal herein provided without any extension of this Lease being made in  
15 writing or without any new lease being made in writing, such holding over shall  
16 only create a tenancy from month to month which may be terminated by Lessor on  
17 30 days notice.

## ARTICLE FIVE

## 5.1

18  
19  
20 The Lessor represents and covenants to and with the Lessees that on the  
21 date of the execution of this Lease that Lessor is the owner in fee simple of  
22 said Leased Premises and has the right to lease the same as herein provided and  
23 that they are free from all incumbrances except for inclusion in the Klamath  
24 Project, Enterprise Irrigation District and South Suburban Sanitary District  
25 and the Fire Protection District and the liens, assessments, rules and regula-  
26 tions and laws concerning the same and to the charges of the City of Klamath  
27 Falls for monthly water and/or sewer service and to the ordinances, regulations,  
28 rules and conditions of the City of Klamath Falls concerning such service, and  
29 all rights of way, easements, ditches, drains, highways and roads of record and  
30 those presently existing upon or in the ground if any there may be, which said  
31 exceptions Lessees take subject to, and to present zoning and building and use  
32 restrictions, for which provision has heretofore been made.

## 5.2

That so long as the Lessees fully pay and perform this Agreement and are not in default, the Lessees shall peaceably and quietly have, hold and enjoy the Leased Property during the term of this Lease and any renewal of same, subject to the terms, conditions, agreements and provisions of this Lease, free from any claims against the Lessor and all persons and parties claiming by, through or under the Lessor:

## 5.3

If the Lessor wishes to sell any part or all or any interest in the Leased Property during the term of this Lease and any of said Renewals thereof, Lessor shall first deliver written Notice to the Lessees of the price and the terms and conditions upon which Lessor is willing to sell said Property or said interest therein and the Lessees shall each have the sole and exclusive option and right of first refusal for a period of 60 days from receipt of such Notice to purchase all, but not less than all, of the Property or interest offered at such price and on such terms and conditions.

Said Lessees shall exercise their said Option and Right of First Refusal by delivering a written Notice of acceptance of such offer to Lessor within said 60-day period and by also complying with all of the terms and conditions of such offer, time and full observance of and compliance with the terms of the offer being of the essence of this Agreement.

If Lessees fail to accept said offer and to comply with the terms and conditions of the offer as above specified, said offer shall expire and shall become null and void and of no further force or effect and Lessor shall be free to sell said Property or Interest in said Property so offered at the same price and on the same terms and conditions to any other party. Provided however, that if Lessor shall not sell said Property or Interest in said Property at the same price and on the same terms and conditions offered to Lessees, the Lessor must again notify the Lessees before offering any part or all of said Property or Interest in Property to any other party at any other price or on any other terms or conditions and Lessees shall have the sole and exclusive option of buying all, but not less than all, of said Property or Interest in

1 Property so offered at said new price, terms or conditions in the same manner  
2 as hereinbefore provided. Provided further, that if Lessor offered less than  
3 all of the Property this Agreement shall remain in full force and effect as to  
4 the Property or Interests in Property not offered.

5 ARTICLE SIX

6 6.1

7 A written, acknowledged Memorandum of this Lease stating the names and  
8 addresses of the Lessor and the Lessees, the legal description of the Leased  
9 Premises and that the Lease is for a term of 33 years with 2 Rights of Renewal  
10 of 33 years each and referring to this Lease Agreement for details shall be re-  
11 corded in Klamath County, Oregon Deed Records but this Lease Agreement shall  
12 not be recorded unless hereafter mutually agreed upon by the Parties. Lessees  
13 agree that on the expiration of this Lease or any sooner termination thereof  
14 that Lessees will file in Klamath County, Oregon Deed Records a full and com-  
15 plete written release or quitclaim deed to Lessor of all of the Lessees' right,  
16 title, estate and interest in this Lease Agreement and in the Leased Property.

17 6.2

18 The Lessees' interest and estate in this Lease and the Leased Property  
19 is fully assignable but each Assignment must be in writing and executed by both  
20 the Assignor and Assignee and each Assignee must jointly and severally assume  
21 and agree therein to fully pay, perform, observe and comply with all of the  
22 terms, provisions, conditions and agreements of this Lease and to be personally  
23 bound by the same and an executed and acknowledged original copy of the same  
24 must be duly recorded in Klamath County, Oregon Deed Records and delivered to  
25 the Lessor. Failure to so record an Assignment and deliver it to Lessor shall  
26 constitute a breach of this Agreement and a default on same entitling the Lessor  
27 to assert and use any or all of the remedies herein provided for a breach or  
28 default.

29 6.3

30 Lessor agrees to grant to any sub-lessee under a bona fide sub-lease a  
31 right of quiet enjoyment, in the customary form, during the term of its sub-  
32 lease, notwithstanding a premature termination or the expiration of the Lease

LEASE - Page 11

1 agreement, provided that the term of the sub-lease does not extend beyond the  
2 Basic Term of the Lease, plus renewal options, and provided further that such  
3 sub-lessee agrees that in such event the sub-lease shall be deemed a direct  
4 lease between Lessor and such sub-lessee.

## 6.4

5  
6 Subject to the foregoing, this Agreement shall bind and inure to the  
7 benefit of, as the circumstances may require, the parties and their respective  
8 heirs, devisees, legatees, personal representatives, grantees, successors and  
9 assigns.

## 6.5

10  
11 Any party to this Agreement may in lieu of personal delivery give any  
12 notice in connection with or provided by this Agreement to any other Party or  
13 to the Personal Representative, Guardian or Conservator of said Party's Estate  
14 by mailing the same postage prepaid by certified mail, return receipt request-  
15 ed at any United States Post Office within the State of Oregon addressed to  
16 said Party at the address for said Party hereafter set forth or at the last  
17 address furnished in writing by said Party to be notified, unless the Party giv-  
18 ing said notice has actual knowledge of a different, correct mailing address  
19 for the Party to be notified, in which case said Notice shall be addressed to  
20 such current address of which the Party giving Notice has actual knowledge and  
21 such Notice shall be conclusively deemed to have been personally delivered to  
22 and received by the Party to be notified 3 days after the date said Notice was  
23 so mailed in such United States Post Office within the State of Oregon.

## ARTICLE SEVEN

## 7.1

24  
25  
26 Time and the full and prompt observance and compliance with all of the  
27 terms, provisions, conditions and agreements herein contained on the part of  
28 the Lessees to be paid, observed, performed or complied with are of the essence  
29 of this agreement, and if the Lessees shall be in arrears in the payment of any  
30 installment of rent, or shall fail to keep, observe, perform or comply with any  
31 of the terms, provisions, conditions or agreements herein contained for a period  
32 of 30 days after receiving written notice of such nonpayment or other failure or  
LEASE - Page 12

1 breach of said term, provision, condition or agreement unless such default is  
 2 not susceptible of being cured within such 30-day period in which case Lessees  
 3 shall be permitted such additional time as may be reasonably required to cure  
 4 same; or if any assignment of Lessees' property shall be made for the benefit  
 5 of creditors; or if this Lease or the Estate covered thereby shall be levied  
 6 upon after judgment under a writ of execution, or on a distraint or seizure for  
 7 payment of taxes; or if Lessees or any of them shall be adjudged a bankrupt,  
 8 then and in any of said events this Lease shall be in default.

## 7.2

9  
 10 At any time while this Lease Agreement is in default:

11 (a) The Lessor lawfully may, at Lessor's option, immediately or at  
 12 any time thereafter while said condition continues, without any further demand  
 13 or notice, terminate this Lease and may enter into and upon the Leased Premises  
 14 and repossess the same and expel Lessees and those claiming under Lessees, and  
 15 remove any part or all of their property and store the same at Lessees' expense,  
 16 without being taken or deemed guilty in any manner of trespass or conversion,  
 17 and without prejudice to any other remedies which might be otherwise used for  
 18 arrears of rent, breach of this agreement or to recover possession.

19 (b) The Lessor may have a Receiver appointed by a Court to take pos-  
 20 session of any part or all of the Leased Premises and any and all improvements,  
 21 buildings, furnishings, fixtures and equipment which have been constructed or  
 22 placed thereon for any or all of the following purposes: to protect, maintain,  
 23 repair, rebuild, replace, paint or renovate the same, to operate and manage the  
 24 same and to collect any and all of the rents, issues and profits and to pay all  
 25 of the expenses and costs of incurred by the Receiver in performing such func-  
 26 tions, which shall be at the sole expense of the Lessees, and to pay all rents  
 27 and other sums due to the Lessor.

28 (c) The Lessor may commence and prosecute any and all Court actions,  
 29 suits and proceedings which Lessor deems advisable for the purposes of recover-  
 30 ing possession, collecting the rent and any other indebtedness owing Lessor, to  
 31 recover damages, to foreclose the Lessor's Landlord's lien on any property, to  
 32 obtain injunctions, to adjudicate, determine and declare the rights of the

17984

1 Lessor or any other parties, to obtain attachment and garnishment of any propert-  
 2 ty and money of Lessees, or any of them, to quiet Lessor's title and to termi-  
 3 nate the Lease Agreement and any Renewal or extension of it.

4 (d) All remedies herein provided are non-exclusive and are in addition  
 5 to any other remedies provided by law.

6 (e) Any waiver by Lessor of any breach or default shall not be con-  
 7 sidered as a continuing waiver and shall not operate to bar or prevent Lessor  
 8 from declaring default for any succeeding non-payment, breach or noncompliance  
 9 or nonperformance, either of the same term, condition or agreement or otherwise,  
 10 and Lessor may declare a default and assert and use any or all of the remedies  
 11 provided for breach or default while any non-payment or delinquency in payment  
 12 of rent or other obligation or indebtedness or noncompliance or nonobservance  
 13 of any term, provision, condition or agreement continues.

14 (f) In the event any suit, action or other proceeding is commenced to  
 15 assert and use any or all of the remedies herein provided or provided by law or  
 16 to enforce any of the provisions of this Agreement or recover damages for their  
 17 breach, the prevailing party in such suit, action or proceeding shall be entitle  
 18 to receive from the other party or parties their costs which shall include the  
 19 reasonable cost of title report and title search and such sum as the trial court  
 20 or other judicatory and/or appellate court, if an appeal is taken, may adjudge  
 21 reasonable as attorneys' fees to be allowed the prevailing party in said suit,  
 22 action or proceeding and/or appeal.

23 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed  
 24 the day and year first herein written.

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

Viola T. BuckViola T. Buck  
LESSORRonald W. Boehike  
Ronald W. Boehike

Address:

4833 Glenwood DriveHilsum Falls CR976016846 So 16thKLAMATH FALLS OR97601WM. GANONG  
ATTORNEY AT LAW  
P.O. BOX 57  
KLAMATH FALLS, OR  
97601  
(503) 962-7270

LEASE - Page 14



17985

Address:

Katherine H. Boehlke  
Katherine H. Boehlke

Robert J. Campbell  
Robert J. Campbell

6200 So 6th St  
Klamath Falls, OR  
97601

Jean C. Campbell  
Jean C. Campbell

Lloyd M. Farley  
Lloyd M. Farley  
LESSEES

1101 NW Bond  
Bend OR 97701

STATE OF OREGON )  
County of Klamath ) SS.

On this 6 day of May, 1981, personally appeared the above-named  
Viola T. Buck and acknowledged the foregoing instrument to be her voluntary  
act and deed. BEFORE ME:

(SEAL)

Calvin P. Peyton  
Notary Public for Oregon  
my commission expires 4/11/81

STATE OF OREGON )  
County of Klamath ) SS.

On this 12 day of April, 1981, personally appeared the above-named  
Donald W. Boehlke and Katherine H. Boehlke and acknowledged the foregoing in-  
strument to be their voluntary act and deed. BEFORE ME:

(SEAL)

Calvin P. Peyton  
Notary Public for Oregon  
My Commission expires:

17986

1 STATE OF OREGON )  
2 ) SS.  
3 County of Klamath )

4 On this 12 day of May, 1981, personally appeared the above-named  
Robert J. Campbell and Joan C. Campbell and acknowledged the foregoing instru-  
ment to be their voluntary act and deed. BEFORE ME:

5 (SEAL)

Notary Public for Oregon  
My Commission expires:

11 STATE OF OREGON )  
12 ) SS.  
13 County of Klamath )

14 On this 12 day of May, 1981, personally appeared the above-named  
Lloyd M. Farley and acknowledged the foregoing instrument to be his voluntary  
act and deed. BEFORE ME:

15 (SEAL)

Notary Public for Oregon  
My Commission expires:

WM. GANONG  
ATTORNEY AT LAW  
P.O. BOX 57  
KLAMATH FALLS, OR  
97601  
(503) 887-7726

01/08/02 TUE 22:50 FAX 541 772 3443 HUYCKE BOYD MAULDING  
12/14/01 12:29 5417736314 FIRST CHARTER

17987

008/008  
008

OCT 19 01 15:14 FR JW ADMIN EAST

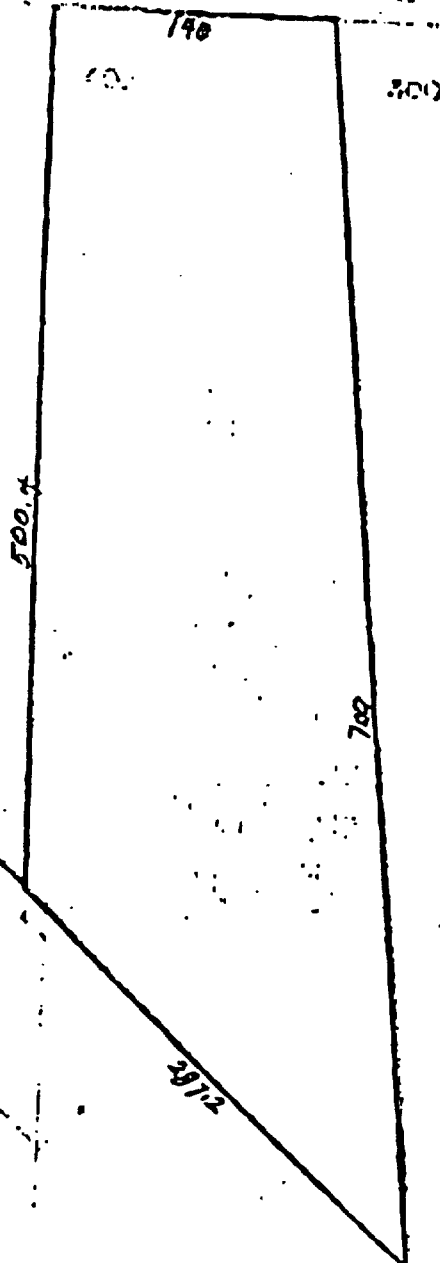
541 684 2231 TO 915417736314

P.06/07

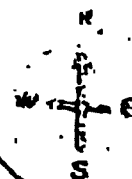
EXHIBIT A

SCALE 1" = 100'

SHANNON AVE



SOUTH



Shown on this map print is the location of the property in question. K-314.76