

2007-009397

Klamath County, Oregon



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05/24/2007 09:56:34 AM

Fee: \$101.00

This Instrument Prepared By and Upon Recordation Return to:
Office Depot, Inc.
2200 Old Germantown Road
Delray Beach, Florida 33445
Attention: Office of the General Counsel, Real Estate

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum"), dated as of 3-28, 2007, is between OFFICE DEPOT, INC., a Delaware corporation ("Tenant"), and M. Eugene Dickerhoof, Noreen Dickerhoof, Darren E. Dickerhoof, and Matthew G. Dickerhoof, individual residents of Oregon, as tenants in common ("Landlord").

WITNESSETH:

A. Premises Landlord and Tenant have entered into a lease ("Lease") dated as of 3-28, 2007, for that certain real property lying, being and situate in the County of Klamath, City of Klamath Falls, State of Oregon, together with the building containing approximately 21,832 square feet erected thereon ("Premises").

The Premises are part of a shopping center known as "Jefferson Square", which shopping center is located on that certain real property lying, being and situate in the County of Klamath, City of Klamath Falls, State of Oregon, more particularly described on EXHIBIT A attached hereto and made a part hereof ("Shopping Center").

B. Term and Renewal Options. The Lease has an initial term of 10 years, subject to extension (at Tenant's option) as provided therein for Four successive additional periods of five years each.

C. Certain Restrictions: The Lease contains the following provisions:

1. Landlord shall not permit any other tenant or occupant of the Shopping Center, other than Tenant, to: (i) use more than the lesser of 5% of its floor area, or 1,000 square feet of floor area (in the aggregate), for the sale, leasing, distribution or display of office or school supplies, office furniture, office machines and other office or school related equipment,

Jefferson Square, Klamath Falls, Oregon

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computers, computer hardware, software and related equipment; cellular telephones and telecommunications equipment and related devices (including personal digital assistance ["PDA"] and the like), or "copy/print services" (as hereinafter defined) or (ii) be primarily engaged in the sale, leasing, distribution or display of any of the items set forth in (i) above. No portion of any real property adjacent to or within one mile of the Shopping Center which is now or may subsequently be acquired or leased by Landlord (or a related entity or affiliate of Landlord), shall be leased or occupied by or conveyed to a direct category competitor of Tenant such as Staples or Office Max. "Copy/print services" is herein defined as a facility or center (whether in-store or free standing) providing any one or more of the following products and/or services: (a) photocopying and facsimile and printing services, such as reproduction and printing services including full, self, coin and color copying, graphic design, desktop publishing, scanning, faxing and imaging services and binding, collating and finishing of documents; (b) mail services, including mail receiving services, mailbox rental or mailing; or (c) shipping, labeling and packaging services. Tenant is aware that Landlord currently owns two other shopping centers less than one mile away and has a third center in development with leases already signed and that the existing tenants and leases located at these centers shall be excluded from this prohibited use clause. The other two centers are partially occupied by Rent a Center and Colortyme, which carry furniture. The two existing shopping centers and the third one under development are more particularly described in EXHIBITS B, C, and D hereto.

2. No portion of the Shopping Center shall be used or occupied for any of the following purposes:

(a) Group A Prohibited Uses:

- (1) A flea market;
- (2) an auditorium, church or other place of public assembly;
- (3) a theater;
- (4) an auditorium;
- (5) a massage parlor;
- (6) a bowling alley;
- (7) a skating rink;
- (8) a car wash;
- (9) a nightclub;
- (10) a billiard or pool hall or game parlor (unless for incidental use in a retail establishment, such as a restaurant);
- (11) a video game arcade (unless for incidental use in a retail establishment, such as a restaurant);
- (12) a motor vehicle or trailer sale, leasing repair outlet or automatic parts supply store;
- (13) an "adult" or book or adult video tape store (defined as stores a substantial portion of the inventory of which is not available for sale or rental to children under 15 years old because it explicitly deals with or depicts human sexuality or whose primary use is the sale of rental inventory restricted to those over 17 years of age because it explicitly deals with or depicts human sexuality);

Jefferson Square, Klamath Falls, Oregon

- (14) industrial or similar uses;
- (15) any use which is not a retail or, subject to Landlord's reasonable approval, a retail related use, consistent with the operation of a first-class shopping center;
- (16) cocktail lounge, bar or disco (except as a part of a full service restaurant);
- (17) Bingo or similar games of chance (lottery tickets and other items commonly sold in retail establishments may be sold);

(b) Group B Prohibited Uses:

- (1) Adult bookstore or adult audio/video store or facility selling or displaying adult products, pornographic books, literature or materials;
- (2) massage parlor; "Head" shop store or store specializing in the sale of drug paraphernalia;
- (3) pawn shop, second hand store, auction house, or flea market;
- (4) funeral establishment;
- (5) automobile sale, leasing or repair facility or used car lot, including body repair facilities;
- (6) auction or bankruptcy sale;
- (7) outdoor circus, carnival (or carnival like show), rides or amusement park, or other entertainment facility;
- (8) bowling alley;
- (9) pool or billiard parlor establishment;
- (10) shooting gallery;
- (11) off-track betting (provided that state sponsored lottery tickets shall not be prohibited);
- (12) refinery;
- (13) any residential use, including but not limited to living quarters, sleeping apartments or lodging rooms;
- (14) theater;
- (15) auditorium, meeting hall, ballroom, school, church or other place of public assembly;
- (16) unemployment agency, service or commission;
- (17) gymnasium, health club, exercise or dance studio or dance hall;
- (18) Bingo or similar games of chance, but state sponsored lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business;
- (19) video game, arcade, pinball or amusement arcade or electronic game room (except as an incidental part of another primary business otherwise permitted herein);
- (20) skating or roller rink;
- (21) car wash;
- (22) cocktail lounge;
- (23) bar, tavern, disco or night club;

(24) restaurant or any other store that sells food or beverages within one hundred (100) feet of the Premises; barber shop or hair salon within one hundred (100) feet of the Premises;

(25) dry cleaner;

(26) Office or non-retail use (which shall not prohibit in the Shopping Center: (i) uses commonly referred to as "quasi-retail", "service retail" or "retail offices" such as a travel agency, real estate office, insurance agency, accounting service, insurance brokerage, stock brokerage, financial services, bank, dentists, orthodontists, chiropractors, etc., (ii) any office space used by a retailer incidental to its retail operations, (iii) a shopping center management office not to exceed 1,500 square feet provided it is not located within one hundred (100) feet of the Premises);

(27) telemarketing or call center;

(28) no "High Intensity Parking User" (defined as a tenant or occupant whose use requires more than five (5) parking spaces per one thousand (1,000) square feet of leasable floor area) in accordance with either customary shopping center practices or governmental regulations, whichever has a higher parking requirement shall be located within three hundred fifty (350) of the front and side perimeter walls of the Premises; or

(29) outdoor meetings or outdoor shows, automobile and other products shows.

3. Except where shown on the Site Plan attached to the Lease as **EXHIBIT B**, the following shall be prohibited at any location in the Shopping Center within 400 feet of the closest demising wall of the Premises: any sports or entertainment facility (including, without limitation, a gymnasium, health club, racquet club, physical fitness facility).

4. The following shall be prohibited at any location in the Shopping Center within 200 feet of the closest demising wall of the Premises: restaurant; amusement center, arcade, virtual reality, laser tag or game room; or school (including, without limitation, trade school or class sessions, but excepting incidental customer training in the use of computer hardware or software sold by Tenant or by any other Occupant of the Shopping Center permitted to engage in such sales).

5. Landlord covenants and agrees that no portion of the Shopping Center shall be used for offices excepting (i) offices incidental to retail uses, and (ii) offices providing services to the general public and customarily found in similar shopping centers (e.g., banking for finance services, real estate or securities brokerage services, financial or tax planning services, accounting, insurance or legal services, optical, medical or dental services or travel agencies).

6. The Prohibited Uses set forth above shall be subject to the rights of Occupants under leases in effect as of the Effective Date of this Lease for as long as such leases remain in effect without any expansion or relocation (except as may be otherwise permitted in such leases), provided such leases do not require the corresponding tenants to be bound by the Prohibited Uses set forth in **EXHIBIT E** to the Lease.

D. Incorporation of Lease. This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Lease, the terms of which are incorporated herein by reference. This instrument is merely a memorandum of the Lease and is subject to all of the terms, provisions and conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall prevail.

E. Binding Effect. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Jefferson Square, Klamath Falls, Oregon

Witnessed By:

M. Eugene Dickerhoof, Noreen Dickerhoof,
Darren E. Dickerhoof, and Matthew G.
Dickerhoof, a Oregon tenants in common

Noreen Dickerhoof
As to (1)

Darren E. Dickerhoof
As to (1)

M. Eugene Dickerhoof
M. Eugene Dickerhoof

M. Eugene Dickerhoof
As to (2)

Darren E. Dickerhoof
As to (2)

Noreen Dickerhoof (2)
Noreen Dickerhoof

Noreen Dickerhoof
As to (3)

Darren E. Dickerhoof (3)
Darren E. Dickerhoof

M. Eugene Dickerhoof
As to (3)

Matthew G. Dickerhoof (4)
Matthew G. Dickerhoof

M. Eugene Dickerhoof
As to (4)

Darren E. Dickerhoof
As to (4)

Witnessed By:

As to (5)

As to (5)

Witnessed By:

As to (6)

As to (6)

TENANT:

OFFICE DEPOT, INC.
a Delaware corporation

By: _____ (5)

Print Name:

Print Title: **EDWARD COSTA**

Date: Vice President, Construction

3/23/07

and

By: _____ (6)

Print Name:

Print Title: **JOHN ROBERT KOCH**

Date: Vice President, Real Estate & Construction

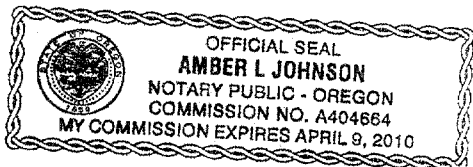
3/23/07

Jefferson Square, Klamath Falls, Oregon

STATE OF Oregon)
) SS:
COUNTY OF Benton)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that M. Eugene Dickerhoof, who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

Given under my hand and official seal this 28 day of March, 2007.

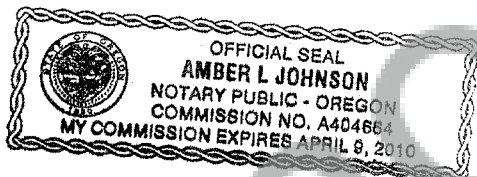


Amber L. Johnson
Notary Public
State of Oregon
My Commission expires: April 9, 2010

STATE OF Oregon)
) SS:
COUNTY OF Benton)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Noreen Dickerhoof, who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily.

Given under my hand and official seal this 28 day of March, 2007.

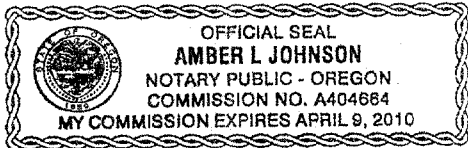


Amber L. Johnson
Notary Public
State of Oregon
My Commission expires: April 9, 2010

STATE OF Oregon)
) SS:
COUNTY OF Benton)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Darren E. Dickerhoof, who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

Given under my hand and official seal this 28 day of March, 2007.

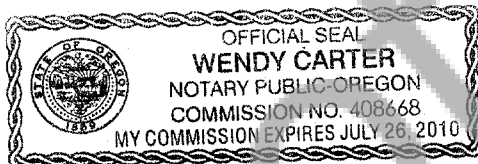


Amber L. Johnson
Notary Public
State of Oregon
My Commission expires: April 9, 2010

STATE OF Oregon)
) SS:
COUNTY OF Wasco)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Matthew G. Dickerhoof, who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

Given under my hand and official seal this 30th day of March, 2007.



Wendy Carter
Notary Public
State of Oregon
My Commission expires: July 26, 2010

Jefferson Square, Klamath Falls, Oregon

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared Edward Costa as VP Constructor of OFFICE DEPOT, INC., a Delaware corporation, to me known to be the person who signed the foregoing instrument as such officer and he/she acknowledged that the execution thereof was his/her free act and deed as such officer for the use and purposes therein expressed and that the instrument is the act and deed of said corporation.

WITNESS my hand and official seal this 23 day of March, 2007.

Linda Feagin
Notary Public
State of Florida

My Commission expires:



STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared John Robert Koch as SVP Real Estate of OFFICE DEPOT, INC., a Delaware corporation, to me known to be the person who signed the foregoing instrument as such officer and he/she acknowledged that the execution thereof was his/her free act and deed as such officer for the use and purposes therein expressed and that the instrument is the act and deed of said corporation.

WITNESS my hand and official seal this 23 day of March, 2007.

Linda Feagin
Notary Public
State of Florida

My Commission expires:



Jefferson Square, Klamath Falls, Oregon

EXHIBIT A

SHOPPING CENTER LEGAL DESCRIPTION

Parcel 2 of Land Partition No. 48-05, said Land Partition being a replat of a portion of Lots 34 and 44 of Enterprise Tracts located in the West ½ of the NW ¼ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

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Jefferson Square, Klamath Falls, Oregon

EXHIBIT B

Unofficial
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Jefferson Square, Klamath Falls, Oregon

3045 S. 6th STREET

PARCEL 1: 37,000 SF CENTER - DOLLAR TREE ANCHOR

A tract of land situated in Tract 33A Enterprise Tracts subdivision, in the SE1/4 NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the cased monument marking the Northwest corner of said Section 3; thence South 00° 00' 30" East along the Westerly boundary of said Section 3, 826.8 feet, more or less, to its intersection with a line parallel with and 75 feet distant at right angles Northeasterly from the centerline of South Sixth Street as the same is now located and constructed, said parallel line being also the Northerly right of way line of said street; thence South 55° 52' 30" East along said parallel line 1,741.84 feet to a 5/8 inch iron pin marking the True Point of Beginning of this description, said point being on the Easterly right of way line of Austin Street with the location of said point being in conformance with record of Survey No. 939 filed in the office of the Klamath County Surveyor which contains the original owner's certification of original property corners; thence North 34° 07' 40" East at right angles to said South Sixth Street and along the Easterly right of way line of Austin Street a distance of 250.00 feet to a 5/8 inch iron pin with aluminum cap; thence South 55° 52' 30" East parallel with South Sixth Street a distance of 310.00 feet to a 5/8 inch iron pin; thence South 34° 07' 30" West parallel with Austin Street a distance of 250.00 feet to a 5/8 inch iron pin on the Northerly right of way line of South Sixth Street; thence North 55° 52' 30" West along the Northerly right of way line of South Sixth Street a distance of 310.00 feet to the True Point of Beginning of this description.

PARCEL 2:

A tract of land situated in Tract 33A, Enterprise Tracts Subdivision, in the SE1/4 NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the cased monument marking the Northwest corner of said Section 3; thence South 0° 00' 30" East along the Westerly boundary of said Section 3, 826.8 feet, more or less, to its intersection with a line parallel with and 75 feet distant at right angles Northeasterly from the centerline of South Sixth Street as the same is now located and constructed, said parallel line being also the Northerly right of way line of said street; thence South 55° 52' 30" East along said parallel line 1,741.84 feet to a 5/8 inch iron pin marking a point on the Easterly right of way line of Austin Street with the location of said point being in conformance with Record of Survey No. 939 filed in the office of the Klamath County Surveyor which contains the original owner's certification of original property corners; thence continuing South 55° 52' 30" East along said parallel line a distance of 310.00 feet to a 5/8 inch iron pin marking the True Point of Beginning of this description; thence North 34° 07' 30" East at right angles to South Sixth Street and parallel with Austin Street a distance of 250.00 feet to a 5/8 inch iron pin; thence South 55° 52' 30" East parallel with South Sixth Street a distance of 141.18 feet to a 5/8 inch iron pin with aluminum cap on the Westerly line of that property described in Volume M68 page 4736, Klamath County Deed Records; thence south 34° 07' 30" West parallel with Austin Street and along the Westerly line of the last described property a distance of 250.00 feet to a 5/8 inch iron pin on the Northerly right of way line of South Sixth Street, said point being the Southwest corner of the above described property and from which a cross chiseled in the concrete sidewalk bears South 34° 07' 30" West 10.00 feet; thence North 55° 52' 30" West along the Northerly right of way line of South Sixth Street a distance of 141.18 feet to the True Point of Beginning of this description.

EXHIBIT C

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Jefferson Square, Klamath Falls, Oregon

PARCEL 1. 4333 S 6TH STREET - 27,000 SF GROCERY

A tract of land situated in the SW 1/4 NW 1/4 of Section 2, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

OUTLET

ANCHOR

Commencing at the West one-quarter corner of said Section 2; thence North 89° 44' 52" East 517.06 feet; thence North 00° 20' 15" East 37.91 feet to a point on the Northerly boundary line of State Highway 98; thence North 89° 43' 30" East 186.30 feet; thence North 00° 20' 15" East 186.70 feet to the point of beginning; thence North 05° 06' 40" East 34.24 feet; thence North 00° 15' 00" West 205.91 feet; thence North 89° 43' 30" East 224.45 feet; thence South 00° 06' 39" East 142.83 feet; thence North 89° 43' 30" East 184.10 feet to the Westerly boundary line of Gary Street; thence South 00° 06' 21" West 37.47 feet; thence South 89° 43' 30" West 324.58 feet; thence South 00° 20' 15" West 60.00 feet; thence South 89° 43' 30" West 90.00 feet to the true point of beginning.

TOGETHER WITH an easement for the joint right to use for customer, patron, invitee and employee parking and for the purposes of ingress and egress and passage for automobile and pedestrian traffic on all that real property described hereinafter.

A tract of land situated in the SW 1/4 NW 1/4 of Section 2, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the West one-fourth corner of said Section 2, said point being marked by a brass plug in a capped monument which is 1.60 feet North of the centerline of State Highway 98 (South Sixth Street); thence North 89° 44' 52" East along the east-west centerline of said Section 2 (this is the bearing to the center one-fourth corner of said Section 2 which is monumented by a bolt in the pavement that is 1.20 feet North of the centerline of said highway) a distance of 517.06 feet; thence North 0° 20' 15" East a distance of 37.91 feet to a one-half inch iron pin on the Northerly line of State Highway 98 to be relocated a distance of 40.00 feet at right angles to the centerline of said highway; thence North 89° 43' 30" East along said Northerly line of State Highway 98 a distance of 186.30 feet to a 5/8 inch iron pin on the true point of beginning of this description, said point being on the Westerly line of the Peace Memorial Church property as described in Deed Volume 317 at Page 491, Klamath County Deed Records and the Easterly line of the Bennington property as described in Deed Volume 331 at Page 402, Klamath County Deed Records; thence North 0° 20' 15" East along the last described line a distance of 186.70 feet to a 5/8 inch iron pin; thence North 89° 43' 30" East a distance of 90.00 feet to a 5/8 inch iron pin; thence North 0° 20' 15" East a distance of 60.00 feet to a 3/8 inch iron pin on the Southerly line of the Collier property as described in Deed Volume 363 at Page 398, Klamath County Deed Records; thence North 89° 43' 30" East along the Southerly line of said Collier property a distance of 74.30 feet to a 5/8 inch iron pin; thence South 0° 20' 15" West a distance of 258.70 feet to a 5/8 inch iron pin on the Northerly line of the above described State Highway 98 right of way, said point also being on the Easterly line of the above described church property; thence South 89° 43' 30" West along said Northerly line of State Highway 98 a distance of 186.30 feet to the true point of beginning.

PARCEL 2:

A tract of land situated in the SW 1/4 NW 1/4 of Section 2, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the West one-quarter corner of said Section 2, said point being marked by a brass plug in a capped monument which is 1.60 feet North of the centerline of State Highway 98 (South Sixth Street); thence North 89° 44' 52" East along the East-West centerline of said Section 2 (this is the bearing to the center one-fourth corner of said Section 2 which is monumented by a bolt in the pavement that is 1.20 feet North of the centerline of said highway) a distance of 517.06 feet; thence North 0° 20' 15" East a distance of 37.91 feet to a one-half inch iron pin on the true point of beginning of this description, said point being on the Northerly line of State Highway 98, as relocated a distance of 40.00 feet at right angles to the centerline of said highway; said point also being on the Westerly line of the Bennington property as described in Deed Volume 331 at Page 402, Klamath County Deed Records; thence North 89° 43' 30" East along the Northerly line of Highway 98 as relocated a distance of 40.00 feet at right angles to the centerline of said Highway a distance of 186.30 feet to a 5/8 inch iron pin on the Easterly line of said Bennington property and the Westerly line of the Peace Memorial Presbyterian Church property as described in Deed Volume 317 at Page 491, Klamath County Deed Records; thence North 0° 20' 15" East along the last described line a distance of 186.70 feet to a 5/8 inch iron pin; thence North 05° 06' 40" East a distance of 34.24 feet; thence North 00° 15' 00" East a distance of 205.91 feet; thence South 89° 43' 30" West a distance of 185.57 feet; thence South 00° 14' 10" East a distance of 205.99 feet; thence South 17° 20' 35" West a distance of 45.27 feet; thence South 00° 20' 15" West a distance of 186.70 feet to the true point of beginning.

TOGETHER WITH a non-exclusive easement for ingress, egress, and traveling by vehicular or pedestrian travel over and across the herein mentioned described easement area and for utility and service line over, under and across that said certain easement area situated in the SW 1/4 NW 1/4 of Section 2, Township 39 South, Range 9 East of the Willamette Meridian, more particularly described as follows:

COMMENCING at the West one-quarter corner of said Section 2, thence North 89° 44' 52" East, 517.06 feet; thence North 00° 20' 15" East, 224.51 feet; thence North 17° 20' 35" East, 45.27 feet to the Southwest corner of an existing building; thence along the Westerly face of said building North 00° 14' 10" West 123.96 feet to the Northwest corner of said building; thence continuing North 00° 14' 10" West 30.00 feet to the true point of beginning; thence South 89° 43' 30" West 146.30 feet to the Easterly boundary line of Eina Street; thence North 00° 20' 15" East 20.99 feet; thence leaving the Easterly boundary line of Eina Street North 89° 43' 30" East 148.10 feet; thence South 00° 14' 10" East 20.00 feet to the true point of beginning.

EXHIBIT D

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Jefferson Square, Klamath Falls, Oregon

EXHIBIT A
LEGAL DESCRIPTION

Parcel 2 and Parcel 3 of Land Partition 22-00 in the SW 1/4 of the
SW 1/4 of Section 3, Township 39 South, Range 9 East,
Willamette Meridian, as on file with the Clerk of Klamath County,
Oregon.

2977 WASHBURN WAY

12,400 SF CENTER

AUTOZONE ANCHOR