

ORDINANCE NO. 1172

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LEASE AGREEMENT WITH CANBY COURTHOUSE SQUARE, LLC FOR THE RENTAL OF PROPERTY FOR CITY OFFICES; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby completed an immediate and future needs assessment study it commissioned with DLR Group in July of 2004 which suggests that current city office space is insufficient for present and future needs; and

WHEREAS, Canby Courthouse Square, LLC has office space available within one block of the City's offices and is willing to lease said space to the City at a reasonable rental for a 5 year term; and

WHEREAS, the Canby City Charter requires an ordinance be approved for the expenditure of \$15,000.00 or more; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, the attached Lease Agreement with Canby Courthouse Square, LLC. A copy of the Lease Agreement is attached hereto, marked as Exhibit "A" and by this reference incorporated herein.

Section 2. Emergency Declared.

It being necessary for the health, safety and general welfare of the citizens of Canby, that this lease be completed as soon as possible in order to alleviate the limited space in Canby City Hall, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, March 16, 2005 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof

on Wednesday, April 6, 2005, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

Kimberly Scheafer
Kimberly Scheafer
City Recorder - Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 6th day of April, 2005, by the following vote:

YEAS 5

NAYS 0

Melody Thompson
Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer
Kimberly Scheafer, City Recorder - Pro Tem

LEASE

This Lease is made and entered into on this 1st day of May, 2005 by and between Canby Courthouse Square, LLC ("Landlord"), and City of Canby ("Tenant"),

1. LEASE

Tenant wishes to lease from Landlord the following property (the "Property") located in the State of Oregon and described as follows:

A portion of the building located at **170 NW 2nd Avenue** located in Canby, Oregon, consisting of approximately **3,380 sq.ft.**

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be observed and performed, the Landlord leases to the Tenant and the Tenant rents from the Landlord that certain space (Tenant's Leased Premises) at the location delineated on the site plan attached hereto and marked Exhibit A and incorporated herein which is to be constructed by the Landlord and the Tenant in accordance with the scope of the work described in Exhibit D which is attached and incorporated herein. This Lease shall not be effective until the site plan (Exhibit B), Plan of Leased Premises (Exhibit C) and the scope of work (Exhibit D) have been so attached and have been initialed by the parties.

2. TERM, POSSESSION

A. Term. The term of the lease shall commence on **May 1, 2005** and continue for **60** full calendar months. If Tenant desires to either terminate this lease or exercise an option to renew, such written notice to Landlord shall be given not less than one hundred and twenty (120) days prior to the last day of the expiring term. If the lease is not then in default at the time an option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this lease for two (2) additional (3) year periods.

The giving of such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties. Landlord and Tenant shall then be bound to take the steps required in connection with the determination of rent as specified below.

The terms and conditions of the lease for each renewal term shall be identical with the original term except for rent and except that Tenant will no longer have any option to renew this lease that has been exercised.

B. Delivery of Possession. Landlord shall have no liability for delays in delivery of possession caused by labor disputes, shortages of materials, the right to terminate this lease because of delay in the delivery of possession for any reason, but Tenant's obligation to pay rent will be delayed until possession is delivered to Tenant. Delivery of possession will occur when Tenant actually occupies the Property or when Landlord notifies Tenant that the Property is available for occupancy by Tenant.

3. RENT

Tenant agrees to pay to Landlord on a monthly basis a base rent of **\$2,873.00** per month from May 1, 2005 until May 1, 2006. Beginning May 1, 2006 until May 1, 2010 the rent will increase to \$3,042.00 per month.

A. Time and Place of Payment. Rent will be paid in advance on the first day of each month at the address for Landlord set forth in this lease. Rent is uniformly apportionable day to day. Rent for the partial month (if any) in which the lease commenced shall be prorated and paid at the commencement of the lease term.

B. Interest and Late Charges. The first month's rent shall be prorated of the date the lease commences. In the event rent is paid more than ten (10) days after due, the Landlord shall be entitled to receive a late fee in the amount of the greater of \$25.00 or ten percent (10%) of the rental which is late that month. The amount of rent, which remains due and unpaid for more than thirty (30) days, and all unpaid late fees, shall bear interest at the rate of twelve percent (12%) per annum.

C. Rent and Deposit Fees. First month rent shall be paid prior to occupancy. A deposit equal to **one** month's rent is due prior to occupancy for cleaning, excess damage, keys, etc. The deposit shall be returned upon the termination of the lease, less any amounts deducted to return the space back to like new condition.

D. Additional Rent; Operating Expenses. All taxes, insurance costs, and utility charges that the Tenant is required to pay by this Lease and any other sum that the Tenant is required to pay to the Landlord or to third parties shall be considered as additional rent.

E. Lease Buy-out Fee. If either party chooses to terminate the lease before the stated termination date the terminating party is required to give six (6) months notice and pay to the other party a lease buy-out fee equal to **two** (2) monthly rent payments. If the Tenant chooses the assignment and subletting option as described in Section 22 then all cost and fees associated with this option will be the sole responsibility of the Tenant.

4. CONSTRUCTION

A. Delivery of Possession for Tenant's Work. Landlord shall deliver Premises to Tenant in accordance with Exhibits.

B. Construction by Tenant. Tenant agrees that the Tenant will at the Tenant's sole cost and expense provide all the work (except Landlord's work set forth in Exhibit) of whatever nature that is necessary to complete the Leased Premises and to open the Leased Premises for business to the public including its obligation set forth in Exhibit as "Tenant's Work." The Tenant agrees to furnish to Landlord a complete and detailed set of plans and specifications in compliance with Exhibit setting forth and detailing Tenant's work in such detail as the Landlord may reasonably require. Said plans and specifications require Landlord's written approval before the Tenant begins "Tenant's Work" and said approval by Landlord is not to be unreasonably withheld. The Tenant's architect and any contractor used in the pursuit of Tenant's work shall at Tenant's sole cost and expense furnish a bond or other security satisfactory to the Landlord to insure diligent and faithful performance of Tenant's work.

C. Inspection of Work. All construction required or permitted by this Lease, whether by the Landlord or the Tenant, shall be done in a good and workmanlike manner and in compliance with all applicable laws and all lawful ordinances, regulations, and orders of governmental authority and insurers of the Premises. Either party may inspect the work of the other at reasonable times and shall promptly give notice of observed defects.

5. USE OF THE PREMISES

A. Permitted Use. The premises shall be used for **Office** and no other purpose without the consent of Landlord, which consent shall not be withheld unreasonably. If law, or governmental regulation prohibits this use this lease shall terminate.

B. Restriction on Use. In connection with the use of the Premises, the Tenant shall:

- (1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance unless such changes are required because of the Tenant's specific use.
- (2) Refrain from any activity that would make it impossible to insure the Premises.

(3) Refrain from any use that would be reasonably offensive to other Tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the written consent of Landlord.

(6) Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 5.1 (Use of Leased Premises). Tenant may store such Hazardous Substances on the premises only in quantities necessary to satisfy Tenant's reasonably anticipate needs. Tenant shall comply with all Environmental laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term "Environmental Law" shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

6. INDEMNIFICATION

Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the lease term as a result of contamination by Hazardous Material as a result of Tenant's use or activities, or of Tenant's agents or contractors. This indemnification of Landlord by Tenant includes, without limitation, cost incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the premises. Without limiting the foregoing, if the presence of any hazardous material on the premises caused or permitted by Tenant or its agents or contractors results in any contamination of the premises, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the premises to the condition existing prior to the release of any such hazardous material to the premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long

as such actions would not potentially have any material adverse long-term or short-term effect on the premises. The foregoing indemnity shall survive the expiration or earlier termination of this lease.

7. CONTROL OF COMMON AREAS BY LANDLORD

All Common Areas shall at all times be subject to the exclusive control and management of the Landlord, and the Landlord shall have the right from time to time to establish, modify and enforce rules and regulations with respect to all Common Areas. The Tenant agrees to abide by and to conform to such rules and regulations, to cause its agents, employees, and independent contractors so to abide and conform and to use its best efforts to cause its customers, invitees, and licensees so to abide and conform.

8. MAINTENANCE AND REPAIR

A. Landlord's Obligations for Maintenance. Landlord shall keep and maintain the foundation, exterior walls and roof of the building in which the Leased Premises are located. Landlord shall not be called upon to make any other improvements or repairs of any kind upon the Leased Premises and appurtenances.

B. Tenant's Obligations for Maintenance. Tenant shall keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) the Leased Premises and every part thereof and any and all appurtenances thereto wherever located, including, but without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, store front, all plumbing and sewage facilities within the Leased Premises including free flow up to the main sewer line, fixtures, heating and air conditioning and electrical systems (whether or not located in the Leased Premises), walls, floors, and ceilings, and any work performed by Tenant pursuant to Exhibit.

C. Entry by Landlord. Tenant shall permit Landlord and its agents to enter the demised Premises at all reasonable times, with 48 hours' advance notice, for any of the following purposes: to inspect the same; to maintain the building in which the said Premises are located; to make such repairs to the demised premises as Landlord is obligated or may elect to make; to make repairs, alterations or additions to any other portion of the building in which the demised premises are located; to post notices of non-responsibility for alterations, additions or repairs; and to relocate any pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises whether located within or without the Premises. Landlord shall have such right of entry and the right to fulfill the purpose thereof without any rebate of rent to Tenant for any loss of occupancy or quiet enjoyment of the demised premises thereby occasioned.

9. ALTERATIONS

A. Alterations Prohibited. Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining the Landlord's written consent. Tenant without the prior approval of Landlord may make interior changes and alterations provided the same do not materially alter the structure of the Premises. In addition, the Tenant shall not place or remove any wall partitions without first consulting with the Landlord. Any and all alterations, fixtures, and improvements, and trade fixtures other than the usual trade fixtures which may be made or installed by the Tenant upon the Premises and which in any manner are attached to the floors, wall, or ceilings, shall be the property of the Landlord when installed unless the applicable Landlord's consent or worksheet specifically provides otherwise. Improvements and alterations installed by the Tenant shall, at the Landlord's option, be removed by the Tenant and the Premises restored unless the applicable Landlord's consent or work sheet specifically provides otherwise.

10. UTILITIES

Tenant shall pay, when due, all charges for electricity, gas, janitorial services, telephone service, and any other utilities of any kind furnished to the leased premises. Separate electrical meters have previously been installed for service to the building.

11. TAXES

Tenant agrees to pay to Landlord as additional rent its proportionate share of any and all general and special taxes, including assessments and other governmental charges (hereinafter referred to as "taxes") which may be lawfully charged, assessed, or imposed upon the Premises or any part thereof. For each calendar year during the lease term, the Tenant's proportionate share shall be equal to that portion of said taxes and assessments that the number of square feet of floor area in the Leased Premises bears to the total number of square feet of constructed floor area leased on the first day of each calendar month in such calendar year.

Tenant's proportionate share of all such taxes and assessments during the lease term shall be paid in monthly installments on or before the first day of each calendar month, in advance, in an amount estimated by the Landlord. Upon receipt of all tax billings and assessments attributable to any calendar year during the lease term, the Landlord shall furnish the Tenant with a written statement of the actual amount of the Tenant's proportionate share of the taxes and assessments for such year. If the total amount paid by the Tenant under this section for any calendar year during the lease term shall be less than the actual amount due from the Tenant for such year, as shown on such statement, Tenant shall pay to the Landlord the difference between the amount paid by the Tenant and the actual amount due, such deficiency to be paid within ten (10) days after demand thereof by the Landlord and if the total amount paid by the Tenant hereunder for any

calendar year shall exceed such actual amount paid due from the Tenant for such calendar year such excess shall promptly be refunded by the Landlord to the Tenant. All amounts due hereunder shall be payable to the Landlord at the place where the fixed minimum rent is payable. For the calendar years for which this Lease commences and terminates the provisions of this section shall apply and Tenant's liability for its proportionate share of any taxes and assessments for such years shall be subject to prorate adjustment based upon the number of days of said calendar years during the lease term. A copy of the tax bill or assessment submitted by the Landlord to the Tenant shall at all times be sufficient evidence of the amount of taxes and/or assessments assessed or levied against the property to which such bill relates. Prior to the commencement of the lease term and from time to time thereafter throughout the lease term, Landlord shall notify the Tenant in writing of the Landlord's estimate of Tenant's monthly installments due hereunder.

Landlord shall pay the real property taxes so as to receive any statutory discount available. The parties recognize that the present statutory discount is three percent (3%), provided payment is made by November 15 of each year. (ORS 311.505). Tenant's proportionate share of the real property taxes shall be computed based upon the assumption that the Landlord has received the maximum statutory discount available for the real property tax year in question.

12. LIABILITY INSURANCE

Tenant agrees at Tenant's own expense to maintain during the term of this lease public liability insurance in a company authorized to do business in the State of Oregon with combined single limit of not less than Two Million Dollars (\$2,000,000) for personal injury, death, or property damage, and that Landlord will be one of the parties insured thereunder. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the leased premises; whether or not related to an occurrence caused or contributed to by Landlord negligence, and shall protect Landlord and Tenant against claims of third persons. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property, and during the lease to evidence renewals of the insurance.

13. FIRE AND CASUALTY INSURANCE

Landlord shall keep the building and improvements insured at Landlord's expense against fire and other risks covered by a standard casualty insurance policy with an endorsement for extended coverage. Tenant is responsible for Tenant's own contents.

Tenant agrees that it will not keep, use, sell or offer to sell in or upon the Leased Premises any article, which may be prohibited by the standard form of fire insurance policy. Tenant agrees to pay any increase in premiums for fire and extended coverage insurance that may be charged during the Lease Term on the amount of such insurance which may be carried by Landlord on the Leased Premises resulting from the type of business carried on or merchandise sold by Tenant in the Leased Premises, whether or not Landlord has consented to the same.

In the event Tenant's occupancy causes any increase of premium for the fire, boiler and/or casualty rates on the Leased Premises or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Leased Premises, the Tenant shall pay the additional premium on the fire, boiler, and/or casualty insurance policies by reason thereof. The Tenant also shall pay, in such event, any additional premium on the rent insurance policy that may be carried by the Landlord for its protection against rent loss through fire. Bills for such additional premiums shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rent.

Tenant will indemnify Landlord and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased Premises, or the occupancy or use by Tenant of the Lease Premises and Common Areas or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, Tenants or concessionaires. In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Landlord in connection with such litigation. Tenant shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Landlord in enforcing the covenants and agreements in this lease.

14. WAIVER OF SUBROGATION

The liability and casualty insurance policies to be obtained as provided in this lease shall provide that the insurer waives all right of recovery by way of subrogation against Landlord and/or Tenant in connection with any damage covered by such policies and Tenant's insurer shall agree to be bound by the disclaimer set forth in the preceding paragraph.

15. LIENS

Tenant shall keep the leased premises and the property on which the leased premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by Tenant, and Tenant shall indemnify and hold Landlord harmless from all claims, demands, liabilities and expenses, including attorney's fees relating to such liens.

If any mechanics, laborers, materialmen, or other lien caused or charged to Tenant shall at any time be filed against the Leased Premises, Tenant shall have the right to contest such lien or charge, provided, Tenant within thirty (30) days after notice of the filing thereof, will cause the same to be discharged of record or in lieu thereof to secure Landlord against said lien by depositing with landlord, to be held in trust, cash or securities satisfactory to landlord in an amount sufficient to discharge the lien plus any costs, attorney's fees and other charges that could accrue as a result of foreclosure or sale under the lien.

16. DESTRUCTION OF PREMISES

In the event of destruction of the improvements on which the leased premises are situated, whether by fire or other casualty, to the extent of 50 percent or more of the value of such improvements, either party may elect by written notice to the other not more than 45 days after the fire or other casualty, whether or not to terminate the lease. If either party elects to terminate, this lease shall terminate as of the date of the fire or other casualty and Tenant shall receive back any prepaid rent. If neither party elects to terminate or if the building is partially destroyed and the damage so occasioned shall not amount to the extent above indicated, Tenant shall at its expense properly restore the premises in substantially the same form as prior to the destruction. For the period of time between the date of such fire or other casualty and until such repairs have been substantially completed, there shall be such an abatement of rental as the nature of the injury or damage to its interference with occupancy of the premises by Tenant shall warrant. In the event the Landlord and Tenant are not able to agree on the amount of rent to abate, then the matter shall be determined by arbitration as provided in paragraph 38 herein. It is further understood and agreed that if the leased premises be but slightly injured and the damage so occasioned shall not cause any material interference with the occupation, use, and operation by Tenant, there shall be no abatement of rental and Tenant shall repair said damage with all convenient speed.

In the event the amount of such insurance proceeds distributed on any policy relating to the Leased Premises exceeds Ten Thousand Dollars (\$10,000.00), such insurance proceeds as may be paid to Landlord shall be deposited with Landlord to be held and disbursed for the repairing, rebuilding, restoring or replacing of the Leased Premises or any portion thereof, or any improvements from time to time situated thereon or therein, subject to the pertinent provisions of any mortgage and in accordance with the provisions of this Lease. No sums shall be paid by Landlord toward such repairing, rebuilding, restoring or replacing (according to any plans or specifications which may be adopted therefore) in excess of the amount received from any such insurance policies provided by Tenant for such repairing, rebuilding, restoring or replacing, and that the amount received from such insurance policies is sufficient to complete such work.

17. CONDEMNATION

A. Generally. The term "condemnation" used herein shall mean any taking of any interest in the premises or the improvements to the premises by right of eminent domain or any purchase of any such interest in lieu of such taking.

B. Total Taking. In the event the whole of the demised premises are taken by condemnation, or only a portion of the premises be taken by condemnation so as to render the remainder economically unsuitable for its primary intended use under this Lease in which event such partial taking shall be deemed a total taking for purposes hereof, then in any such event this lease shall terminate as of the date title to the demised premises vests in the condemning authority. For the purposes hereof, such date of vesting in the condemnor terminating this lease shall operate as though it were the date originally intended by the parties for expiration of the tenancy created hereunder, and the rent reserve herein shall be adjusted in the light of the condemnation, so that Tenant shall pay rent to Landlord only up to the date of vesting in the condemnor. Any prepaid or advance rental paid by Tenant to Landlord for the part of the term extending beyond the date on which the title vests in the condemnor shall be refunded within ten (10) days after Landlord has received an award of just compensation from the condemning authority for the taking of the demised premises, provided Tenant shall have duly performed all the covenants and conditions of this lease by it to be performed.

C. Partial Taking. In the event that only a portion of the demised premises is taken, Landlord shall have the right to terminate this lease as of the date title thereto vest in the condemnor by giving to Tenant written notice of such termination; but should Landlord no so terminate this lease when a portion of the demised premises is so taken, this lease shall terminate as to the part taken, and Landlord shall proceed as soon as reasonably possible to restore the remaining portion of the premises to a self-contained architectural unit; provided, however, that Landlord shall not be obligated to undertake any such repairs if the cost thereof exceeds the award. The rent shall be adjusted for the portion of the demised premises remaining after condemnation so that Tenant shall be required to pay for the balance of the term of that portion of the rent reserved herein which the value of the portion of the demised premises remaining after condemnation bears to the value of the demised premises immediately prior to the date of condemnation. The rental shall be apportioned as aforesaid by agreement between the parties, or if the parties are unable to agree, then by arbitration according to paragraph of this lease. Pending such agreement or arbitration, Tenant shall pay at the time and in the manner above provided the rental herein reserved, and all other charges herein required to be paid by Tenant, without deduction, and on such agreement or arbitration Tenant shall be entitled to credit for any excess rentals paid.

D. Landlord to Receive Award. It is specifically understood and agreed that Landlord shall be entitled to all of the proceeds of any partial or total condemnation, and Tenant shall have no claim against Landlord as a result of condemnation.

18. LANDLORD'S WARRANTY

Landlords warrant that they are the owners of the Premises and have the right to lease them. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

19. SURRENDER OF PREMISES

Upon the termination of this lease for any reason whatsoever, Tenant shall promptly vacate the premises and deliver the same to Landlord in as good order and repair as said premises were at the commencement of this lease, ordinary wear and tear and loss or damage by fire excepted. All additions to or alterations of the leased premises, whether installed by Landlord or by Tenant, shall at once become part of the realty and belong to Landlord. Tenant agrees to restore any damage caused by the removal of any property Tenant is entitled to remove pursuant to this paragraph.

20. REMOVAL OF PROPERTY

If Tenant shall fail to remove any of Tenant's property of any nature whatsoever from the leased premises at the termination of this lease, or when Landlord has the right of reentry, Landlord may, at Landlord's option, remove and store said property without liability for the loss thereof or damage thereto, such storage to be for the account and at the expense of Tenant. If Tenant does not pay the cost of storing any such property after it has been stored for a period of thirty days or more, Landlord may, at Landlord's option, sell or permit to be sold, any or all of such property at public or private sale in such manner and at such times and places as Landlord in Landlord's sole discretion may deem proper, without notice to Tenant, and shall apply the proceeds of such sales: first, to the costs and expense of such sale, including reasonable attorney fees actually incurred; second, to the payment of the costs or charges for storing any such property; third, to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and fourth, the balance, if any to Tenant.

21. ASSIGNMENT AND SUBLETTING

Tenant shall not assign, mortgage or encumber all or part of this lease, nor sublet, nor suffer or permit the leased premises or any part thereof to be used by others, without the prior written consent of landlord in each instance, or sublet the whole or any part of the leased premises without first obtaining the Landlord's written consent, which shall not be unreasonably withheld. If Tenant is a corporation, sale of a controlling interest in the stock of the corporation shall be considered an assignment. No such assignment or subletting shall release or relieve the Tenant from any of its obligations under this lease. In the event of any attempted assignment or subletting without such consent of Landlord,

this lease may be terminated at the option of Landlord. In the event this lease is assigned to any person or entity pursuant to the provisions to the Bankruptcy Code 11 USC 101 et seq. (the "Bankruptcy Code"), any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any person or entity to which this lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

22. LANDLORD'S RIGHT TO PERFORM

In the event that Tenant fails or refuses to pay, when due, any sum of money required to be paid in the performance or observance of any of the terms of this lease on the part of Tenant to be performed or observed, the Landlord may, at his option, without any obligation, however, on his part to do so, pay such sum of money, and thereafter such sum of money shall be repaid by the Tenant to the Landlord forthwith upon the Landlord's making demand upon the Tenant for such repayment, with interest thereon at the rate of 10% per annum from the date of the making of such payment by the Landlord until the date of the making of the repayment to the Landlord by the Tenant.

23. ACCESS BY LANDLORD

Tenant will permit Landlord and Landlord's agents to enter into and upon the leased premises at all reasonable times for the purpose of inspecting the same, for altering or improving the leased premises, or for showing the premises to prospective purchasers or Tenants.

24. NONWAIVER

Waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition of this lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

25. INDEMNIFICATION

Tenant shall defend and indemnify Landlord and save Landlord harmless from and against any and all claims, demands, liabilities, damages, costs, or expenses, including attorney fees, arising from any act, omission, or negligence of Tenant, or the officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of Tenant in or about the leased premises, or arising from any accident, injury, or damage, howsoever and by whomsoever caused, to any person or property, occurring in or about the leased premises or Tenant's premises.

26. HOLDING OVER

In the event Tenant holds over after the term of this lease, then Tenant shall remain bound by all terms, conditions, and covenants of this lease, except that the holding over shall be construed to create a tenancy from month to month, and the rental shall be equal to 110% of the highest regular monthly rental payable by Tenant unto Landlord during the term of this lease, including any renewals. If a month-to-month tenancy results from a holdover by Tenant under this paragraph, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than ten (10) day prior to the termination date which shall be specified in the notice. Tenant waives any notice which would otherwise be provided by law with respect to a month to month tenancy.

27. MORTGAGE

This lease is subordinate to any mortgagee now or hereafter placed on the premises, and to any refinancing, renewals, modifications, consolidations, replacements thereof. Tenant shall attain to any lender or its successor in interest and recognize it as Landlord under this lease, and execute and deliver any documents reasonably required by any purchaser to evidence such attainment.

28. TENANT'S OBLIGATION AS RENT

All amounts payable by Tenant to or on behalf of Landlord under this lease, whether or not expressly denominated as rent, shall constitute rent for the purposes of Section 502 (b)(6) of the Bankruptcy Code, and for purposes of entitling Landlord to exercise all of the remedies available at law or equity, or under this lease, for the nonpayment of rent.

29. DEFAULT

The following shall be events of default:

A. Default in Rent. Failure of Tenant to pay any rent or other charge within ten (10) days after it is due. Regardless of the fact that the components of the base rent are separately set forth in paragraph 3 above, Tenant shall pay the entire base rent and may not allocate among the various components. Failure to pay any portion of the rent constitutes default as to all property, real or personal, leased hereunder.

B. Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within such thirty (30) day period, this provision shall be complied with if Tenant begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

C. Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days after an event of default occurs the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

D. Abandonment. Failure of Tenant for ten (10) days or more to occupy the property for one or more of the purposes permitted under this lease unless such failure is excused under other provisions of this lease shall be an abandonment of the property.

30. REMEDIES ON DEFAULT

A. Termination. In the event of default the lease may be terminated at the option of Landlord by notice in writing to Tenant. If the lease is not terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from tenant for the default. If the lease is terminated, Tenant's liability to Landlord for damages shall survive such termination and landlord may reenter, take possession of the premises, and remove any persons or property by legal action.

B. Reletting. Following reentry or abandonment, Landlord may relet the premises and in that connection may make any suitable alterations or refurbish the premises, or both, or change the character or use of the premises, but Landlord shall not be required to relet for any use of purpose other than that specified in the lease or which Landlord may

reasonably consider objectionable. Landlord may relet all or part of the premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

31. REMEDIES CUMULATIVE

The foregoing remedies shall be cumulative, non-exclusive, and in addition to and shall not preclude any other remedy available to Landlord under applicable law.

32. SIGNS AND OTHER ADVERTISING

Tenant shall not affix or maintain upon the exterior glass panes and exterior supports of the show windows, exterior doors, and the exterior walls of the Premises any sign, advertising placards, name, insignia, trademark, descriptive material or any other such like item or items, except such as shall have first received written approval of Landlord as to size, type, color, location, copy, nature and display qualities. Tenant is hereby given notice that only individual letters will be allowed. No canned signs shall be allowed on the building. Anything to the contrary in the Lease notwithstanding, Tenant shall not affix any sign to the roof of the Premises. No advertising medium shall be utilized by tenant which can be heard or experienced outside Tenant's premises, including without limiting the generality of the forgoing, flashing lights, search lights, loudspeakers, phonographs, radios or television. Tenant shall not display paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Premises whether belonging to Tenant, or to Tenant's agent, or to any other person; nor shall Tenant distribute, or cause to be distributed, any handbills or other advertising devices. Tenant shall erect signs only after specific approval of Landlord. Landlord's approval hereunder shall not be unreasonably withheld.

33. NOTICES

All notices under this lease shall be in writing and delivered in person or sent by registered or certified mail to Landlord at the same place rental payments are made, and to Tenant at the leased premises, or such addresses as may hereafter be designated by either party in writing. Notices mailed as aforesaid shall be deemed given on the date of such mailing.

34. EXTRA EXPENDITURES

In the event that Landlord shall make any expenditure for which Tenant is responsible, then the amount thereof, together with interest at twelve percent (12%) per annum and costs, may at Landlord's election, be added to and be deemed part of the installment of rent next falling due.

35. NAME OF BUSINESS

Tenant agrees to operate its business and identify itself to the public under the name of **City of Canby**, and no other name without first having received Landlord's written consent, which consent shall not be unreasonably withheld.

36. SIDEWALK OBSTRUCTIONS

Tenant shall not obstruct the sidewalks adjacent to the demised premises or any portion of the Common Areas by placing any item thereon, including without limitation newspaper racks, bicycle stands, weighing machines, amusement rides, and merchandise or merchandise fixtures of any kind, without first obtaining written permission from Landlord.

37. ADA COMPLIANCE

Landlord, at its expense, shall be responsible to make any Tenant improvements pursuant to the requirements of the Americans with Disabilities Act. Landlord's Delivery of Premises to Tenant shall constitute full satisfaction of Landlord's obligations in this regard, and if any future improvements, alterations or repairs to the Premises are required by governmental authorities under such law or any other laws, Tenant shall be solely responsible for all nonstructural items and any structural items required due to Tenant's specific use of the Premises.

38. SUCCESSORS AND ASSIGNS

The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, personal representatives, and assigns all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

39. ATTORNEY FEES

In case any proceeding is instituted, including any bankruptcy or arbitration proceeding, arising directly or indirectly out of this agreement, the losing party shall pay to the prevailing party its reasonable attorney's fees, together with all expenses, which may reasonably be incurred in taking such action, including, but not limited to, costs incurred in searching records, expert witness fees, anticipated post-judgment collection services, and including any such fees and costs incurred in any appeal of any proceedings. Such sums shall be in addition to all other sums provided by law.

40. RELATION OF PARTIES

Nothing contained in this lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or partnership or joint venture of any association between Landlord and Tenant and no provision contained in this lease or any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

41. GOVERNING LAW

This lease shall be governed by the laws of the State of Oregon. Jurisdiction and venue shall be in Clackamas County.

42. "FOR LEASE" SIGNS

During the period 120 days prior to the date above fixed for the termination of said Lease, the Landlord herein may post on said Premises thereof signs of moderate size notifying the public that the Premises are "for lease."

43. MISCELLANEOUS

A. Integration and Modification. This lease contains the entire agreement between the parties and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This lease cannot be changed orally or terminated orally.

B. Headings. The headings and titles in this lease are inserted only as a matter of convenience and for reference and in no way define limit or describe the scope or intent of this lease, nor in any way affect this lease.


C. Severability. If any term or provision of this lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this lease shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest extent permitted by law.

D. Estoppel Letter. Each party agrees that any time, and from time to time, upon not less than ten (10) days prior written request from the other party, to execute, acknowledge and deliver to the other party a statement in writing, certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), the dates to which the rent, taxes and assessments, if any, have been paid, the amount of any additional rent held by Landlord, and whether the lease is then in default or whether any events have occurred which, with the giving of notice or the passage of time, or both, could constitute a default hereunder, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective assignee, mortgagee or purchaser of the fee interested in the Leased Premises or of this lease.

E. Brokers. Tenant represents that it did not deal with any broker in connection with this lease, and hereby indemnifies Landlord against the claims or demands of any broker claimed through a relationship with Tenant.


Duly executed

LANDLORD:



John Chen
For Canby Courthouse Square, LLC

TENANT:



Mark Adcock
City of Canby

Per John Chen ~ 4/27/05 3:30 PM

Please make lease payments out to:

JSG Management
10212 S.E. Brookmore Court
Portland, Oregon 97266

(503) 803-1818