

Lease

This lease is made and entered into this 20th day of August, 1993,
by and between the following parties:

Young & Pawelski Homes, Inc.
an Oregon Corporation
P.O. Box 729
Newberg, OR 97132

"Lessor"

and

City of Newberg
a Municipal Corporation
414 E. First St.
Newberg, OR 97132

"Lessee"

RECITALS

1. City staff has evaluated several options for centralizing the legal department, Municipal Court and the community development department (which consists of the following departments: Building and Public Works). The results of this evaluation has been that the building located at 719 E. First St., Newberg, Oregon, is the best alternative.
2. The building area is adequate to meet the City's needs at this time. Through adjustments in staff to locations other than 719 E. First St., (in particular it may be possible to move part of engineering off site), the proposed location should serve the City's needs during the next five (5) years.
3. A critical need exists to eliminate staff from the upstairs at City Hall (engineering department). The facility is not as accessible to the disabled as desired.

IT IS THEREFORE MUTUALLY AGREED AS FOLLOWS:

Lessor leases to Lessee and Lessee leases from Lessor the following described property (the "premises"), commonly known as 719 E. First St., Newberg, Oregon, on the terms and conditions stated below:

Lot 10 in block 14 of DESKINS SECOND ADDITION to Newberg in Yamhill County, Oregon EXCEPT that portion conveyed to Homer T.

Hester and Olive K. Hester by deed recorded August 9, 1957 in book 185, Page 169, Deed Records. SUBJECT TO: Conditions and restrictions against liquor contained in deed from S.A. Deskins, a widow, et al, to Bank of Newberg, recorded May 31, 1890 in Book 23, Page 186, Deed Records. SUBJECT TO: Party wall agreement between Harold and Alma Mae Aebischer, husband and wife, and Homer T. and Olive K. Hester, husband and wife, recorded August 9, 1957 in Book 185, Page 171, Deed Records.

Section 1 Occupancy

1.1 Term. The term of this lease shall commence on November 1, 1993 and continue through October 31, 1998.

1.2 Renewal Option. If the lease is not in default at the time each option is exercised or at the time the renewal term is to commence, Lessee shall have the option to renew his lease for one successive term of five years.

1.2.1 The renewal term shall commence on the day following expiration of the preceding term.

1.2.2 The option may be exercised by written notice to Lessor given not less than 30 days prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the lease binding for the renewal term without further acts of the parties.

1.2.3 The terms and conditions of the lease for the renewal term shall be identical with the original except the monthly payment shall be increased by \$110.00 per month.

1.3 Possession. Lessee's right to possession and obligations under the lease shall commence as soon as the work to be performed by the Lessor pursuant to section 5.3 is substantially completed, said substantial completion to be no later than November 1, 1993. If Lessor is not able to give Lessee possession of the premises by November 1, 1993, Lessee at his option, may charge the Lessor liquidated damages in the amount of \$75.00 per day. Lessor may not be charged for days waiting for permits or inspections or weekend days or any other days or delays deemed to be beyond Lessor's control. The parties agree that it is difficult to place a value on the damages suffered by Lessee if the premises are not tendered to Lessee in time, therefore the parties agree that liquidated damages of \$75.00 per day is a reasonable estimation of damages suffered by Lessee.

Section 2 Rent

2.1 Base Rent. During the term of this lease Lessee shall pay to Lessor as base rent the sum of \$2200.00 per month. Rent shall be payable on the first day of each month in advance. The first rental payment will be made when possession is tendered to Lessee on substantial completion of the improvements required in Section 5.3. The first month rent will be prorated from the date that possession is tendered to Lessee on substantial completion of the improvements required herein.

2.2 Adjustment to Rent. Lessee is a public body within the meaning of ORS 307.112 and therefore, may be able to obtain a property tax exemption for the premises. The parties agree that any reduction in property tax on the premises, arising from Lessee's status as a public body will be passed on to Lessee by a reduction in the rent. Specifically, the amount of any property tax reduction each tax year will be prorated over a twelve month period, reducing the rent each month by the prorated sum.

Section 3 Use of Premises.

3.1 Permitted Use. The premises may be used for all lawful activities of the City of Newberg, including, but not limited to, office space.

3.2 Restricted Use. Lessee will not make any unlawful, destructive or offensive use of the premises.

Section 4 Repairs and Maintenance.

4.1 Lessor's Obligations. Lessor shall keep the premises in good repair, operating condition, working order and appearance, including but not limited to:

4.1.1 Repairs and maintenance of the roof and gutters, exterior walls (including painting), bearing walls, structural members, floor slabs, and foundation;

4.1.2 Repair sidewalks, driveways, and curbs in or about the premises;

4.1.3 Repair of the water, sewage, gas, electrical and plumbing in or about the premises to the point of entry;

4.1.4 Repair of heating and air conditioning.

4.1.5 Repair any other item or condition not otherwise specified herein except those under specific control or use by the Lessee, i.e.: telephone system, general maintenance of heating system, computer systems, plugging of sinks and water closets, etc..

4.2 Lessee's Obligations.

4.2.1 Repairs of interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing from the point of entry;

4.2.2 Excepting Lessee will not be responsible for any repairs that arise from Lessor's failure to perform its obligations herein, or arising from any negligence of Lessor, its officers, agents, employees, or contractors.

4.3 Lessor's interference with Lessee. In performing any repairs, replacements, alterations, or other work performed on or around the premises, Lessor shall not cause unreasonable interference with use of the premises by Lessee. Lessor will contact and schedule such work in advance with Lessee for a time agreeable to Lessee, except in the event of an emergency. An emergency shall be any work necessary to prevent immediate risk of injury to persons or property.

4.4 Reimbursement for Repairs Assumed. If either party fails or refuses to make repairs that are required by this section, the other party may make the repairs and charge the actual costs of repairs to the other party. Such expenditures by Lessee may be deducted from rent and other payments subsequently coming due or, at Lessee's election, collected directly from Lessor. Except in an emergency creating an immediate risk of personal injury or property damage, neither party may perform repairs which are the obligation of the other party and charge the other party for the resulting expense unless at least 20 days before work is commenced, the defaulting party is given notice in writing outlining with reasonable particularity the repairs required, and such party fails within that time to initiate such repairs in good faith.

4.5 Inspection of Premises. Lessor shall have the right to inspect the premises after scheduling a time agreeable with Lessee for the purpose of determining the necessity of repairs.

Section 5 Alterations

5.1 Alterations Prohibited. Lessee shall make no improvements or alterations on the premises of any kind without first obtaining Lessor's consent, which will not be unreasonably withheld. All alterations shall be made in good and workmanlike

manner, and in compliance with applicable laws and building codes. Alterations do not include installation of computer and telecommunications wiring, cables and conduit.

5.2 Removal of Alterations. Any improvements made by Lessee or for equipment specific to Lessee, at Lessee's option, will be removed upon expiration of this lease.

5.3 Improvements by Lessor. Incorporated herein as part of this agreement is a certain set of plans labeled as "Proposed Remodel for City of Newberg." All Lessor shall remodel the premises in substantial compliance with said plans. All modifications or variances from said plans must be approved, in writing by Mike Hailey, City Building Official, or such other City Official that may be designated by the City Manager. All is work to be done by Lessor at Lessor's expense. The work shall be commenced as soon as possible by Lessor and to be completed by November 1, 1993. Section 4.4 notwithstanding, Lessee shall not be required to remove any of these improvements or alterations upon termination of the lease. Movable walls or partitions referred to in the plans are to be supplied by Lessee. Phone and computer system wiring and installation will be the responsibility of Lessee.

5.3.1 Substantial Completion. Substantial completion is when the work is sufficiently done in accordance with Exhibit 1 that Lessee may occupy the premises for its intended use. Lessor will notify Lessee when Lessor considers the work substantially completed, and provide a list of items to be completed. Lessor will provide a list of work to be completed, and Lessee will inspect the premises. If Lessee agrees that the work has been substantially completed Lessee will then agree to the release of the rental payments made to escrow. If Lessee considers the work not substantially completed Lessee will provide a list of those items that need to be completed. The premises will then be reinspected by Lessee after Lessor completes the needed work.

5.3.2 Final Completion. When Lessor considers the work completed, including the items on Lessor's list to be completed, as referenced in section 5.3.1, Lessor will notify Lessee. Lessee will inspect the premises and if satisfied that all work is completed will acknowledge this in writing. If Lessor has not completed all work within 30 days of Substantial Completion, Lessee may at its option have the work performed and reduce rental payments by the amount it cost Lessee to have the work performed, or to require Lessor to pay \$75.00 per day in liquidated damages, until the work is completed. The parties agree that it is difficult to place a value on the damages suffered by Lessee if the premises are not completed in time, therefore

the parties agree that liquidated damages of \$75.00 per day is a reasonable estimation of damages suffered by Lessee.

Section 6 Insurance.

6.1 Insurance Required. Lessor shall keep the premises insured at Lessor's expense against fire and other risks covered by a standard fire insurance policy, with an endorsement for extended coverage. Lessee shall bear the expense of any insurance insuring the property of Lessee on the premises against such risks but shall not be required to insure.

6.2 Waiver of Subrogation. Neither the Lessor nor the Lessee shall be liable to the other for loss arising out of damage to or destruction of the lease premises or the building or improvement of which the leased premises are a part or with which they are connected, or the contents of any thereof, when such loss is caused by any of the perils which are or could be included within or insured against by a standard form of fire insurance with extended coverage, including sprinkler leakage insurance, if any. All such claims for any and all loss, however caused, hereby are waived. Such absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either lessor or lessee or by any of their respective agents, servants or employees. It is the intention and agreement of the Lessor and the Lessee that the rentals reserved by this lease have been fixed in contemplation that each party shall fully provide their own insurance protection at their own expense, and that each party shall look to his respective insurance carriers for reimbursement of any such loss, and further, that the insurance carriers involved shall not be entitled to subrogation under any circumstances against any party to this lease.

Section 7 Taxes; Utilities.

7.1 Property Taxes. Lessee shall pay as due all taxes on its personal property located on the premises, if any. Lessor shall pay as due all real property taxes and special assessments levied against the premises. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the premises, other than taxes on the net income of Lessor or Lessee.

7.2 Lessee shall pay for all heat, light, water, power, and other services or utilities used in the above demised premises during the term of this lease. Lessee will maintain side yard area and keep walk ways clear and clean.

Section 8 Damage and Destruction.

8.1 Partial Damage. If the premises are partly damaged and section 8.2 does not apply, the premises shall be repaired by Lessor at Lessor's expense. Repairs shall be accomplished with all reasonable speed and shall be performed in accordance with the provisions of section 4.3.

8.2 Destruction. If the premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Lessee shall be entitled to the reimbursement of any prepaid amounts paid by Lessee and attributable to the anticipated term. If neither party elects to terminate, Lessor shall proceed to restore the premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessor's reasonable control.

8.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the premises are untenable.

8.4 Damage Late in Term. If damage or destruction to which section 8.2 would apply occurs within one year before the end of the then current lease term, Lessee may elect to terminate the lease by written notice to Lessor given within 30 days after the date of the damage.

Section 9 Eminent Domain.

9.1 Partial Taking. If a portion of the premises is condemned Lessee may at its option terminate this lease on the date the condemning authority takes title to the premises.

9.1.1 If Lessee elects not to terminate the lease, Lessor shall proceed as soon as possible to make such repairs and alterations to the premises as are necessary to restore the remaining premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

9.1.2 After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Lessor to restore

the balance of the premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the premises as an economic unit on account of the partial taking.

9.2 Total Taking. If the condemning authority takes the entire premises the lease will terminate as of the date the condemning authority takes possession of the premises.

9.3 Proceeds of Taking. Lessor shall be entitled to all of the proceeds of the condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

9.4 Sale in Lieu of Condemnation. Sale of all or part of the premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this section as a taking by condemnation.

Section 10 Liability and Indemnity.

10.1 Liens. Except for activities for which Lessor is responsible, Lessee shall pay all claims for work done on and for services rendered or material furnished the premises, and shall keep the premises free from any liens. Lessee may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized.

10.2 Liability Insurance. The Lessee during the term of this lease shall maintain liability insurance, with Lessor as an additional insured, insuring against all liability for damage to person or property in or about said leased premise. The amount of said liability insurance shall not be less than \$300,000.00 for injury to one person, \$300,000.00 for injuries arising out of any one accident and not less than \$300,000.00 for property damage.

10.3 Indemnification. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties or by any condition of the premises except to the extent caused by Lessor's negligence or breach of duty under this lease.

10.4 Environmental indemnification. Lessor represents and warrants that any handling, transportation, storage, treatment or usage of Hazardous Materials that has occurred on the premises to date has been in compliance with all applicable federal, state, and local laws, regulations and ordinances. Lessor further represents and warrants that no leak, spill, release, discharge, emission or disposal of Hazardous

Materials has occurred on the premises to date and that the soil, groundwater, and soil vapor on or under the premises is free of Hazardous Materials as of the date that the term of this Lease commences. Lessor agrees to indemnify, defend (with counsel selected by Lessee) and hold Lessee and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims) or loss including attorney's fees, consultant fees, and expert fees (consultants and experts to be selected by Lessee) which arise during or after the term of this lease from or in connection with the presence or suspected presence of Hazardous Materials in the soil, groundwater, or soil vapor on or under the premises, unless the Hazardous Materials are present solely as a result of the negligence or wilful misconduct of Lessee, its officers, employees or agents. Without limiting the generality of the foregoing, the indemnification provided by this section shall specifically cover costs 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 the presence or suspected presence of Hazardous Materials in the soil, groundwater, or soil vapor on or under the premises, unless the Hazardous Materials are present solely as a result of negligence or willful misconduct of Lessee, its officer, employees, or agents. Without limiting the generality of any of the foregoing, the indemnification provided by this section shall also specifically cover costs incurred in connection with:

10.4.1 Hazardous Materials present or suspected to be present in the soil, groundwater, or soil vapor on or under the premises before the term of this lease commences;

10.4.2 Hazardous Materials that migrate, flow, percolate, diffuse, or in any way move onto or under the leased premises after the term of this lease agreement commences;

10.4.3 Hazardous Materials present on or under the premises as a result of any discharge, dumping, spilling (accidental or otherwise) onto the premises during or after the term of this lease agreement by any person, corporation, partnership, or entity other than Lessee.

10.4.4 The foregoing indemnity shall survive the expiration or earlier termination of this lease.

10.4.5 Hazardous Materials means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the United States Environmental Protection Agency as

hazardous substances (40 CFR Part 302) and amendments thereto, petroleum products, or such other substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law.

Section 11 Quiet Enjoyment.

11.1 Lessor's Warranty. Lessor warrants that it is the owner of the premises and has the right to lease them. Lessor will defend Lessee's right to quiet enjoyment of the premises from the lawful claims of all person during the lease term.

Section 12 Default.

12.1 Default. Failure of a party to comply with any term or condition or fulfill any obligation of the lease within 20 days after written notice by the other party specifying the nature of the default with reasonable particularity, shall be a default of this lease. If the default is of such a nature that it cannot be remedied within the 20 day period, this provision shall be complied with if the defaulting party begins correction of the default with the 20 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable, except for any default of Sections 1.3 and 5.3.

Section 13 Remedies on Default.

13.1 Termination. In the event of a default by Lessee, the lease may be terminated at the option of Lessor by written notice to the defaulting party. The termination of this lease shall not deprive either party of any other action, right, or remedy against the other party for possession, rent, or damages, nor shall the omission to enforce any right, action or remedy, be deemed a waiver of the right to enforce the performance of all terms and conditions of this lease by either party.

13.2 Reletting. In the event Lessor regains possession of the premises Lessor shall make a good faith effort to relet the premises. Any rent received by Lessor from reletting the premises shall be applied to any arrears of rent or future rent under this lease and any other damages to which Lessor may be entitled hereunder.

13.3 Right to Cure Defaults. If any party fails to perform any obligation under this lease, the other party shall have the option to do so after 20 days written notice to the defaulting party, except as provided in Sections 1.3 and 5.3. All of the expenditures to correct the default by Lessor shall be reimbursed by Lessee on demand. All expenditures by Lessee to correct defaults by Lessor shall be either reimbursed by Lessor on demand, or applied against Lessee's rental payments.

Section 14 Fixtures.

14.1 All fixtures installed by Lessee shall remain the property of Lessee and may be removed on termination of this lease. All fixtures that remain after termination or expiration of this lease shall be considered abandon, and Lessor may dispose of them.

Section 15 Miscellaneous.

15.1 Nonwaiver. Waiver by either party of strict performance of any provisions of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or any other provision.

15.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover, in addition to costs, actual attorney's fees. The parties agree that Lessee may use in house counsel to represent it in any action. Furthermore, it is difficult to determine the fair value of in house counsel's time, therefore the parties agree the reasonable value of said in house counsel's time is \$150.00 per hour. It is further agreed that Lessee may recover a sum equal to said in house counsel's time spent on the matter at the rate of \$150.00 per hour.

15.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after being deposited in the U.S. Mail, as certified mail, addressed to the address first given in this lease or to such other address as may be specified from time to time by either party in writing.

15.4 Succession. This lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

15.5 Proration of Rent. In the event of commencement or termination of this lease at a time other than the beginning or end of the one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Lessee.

15.6 Time is of the Essence. Time is of the essence of the performance of each parties' obligations under this lease.

15.7 Early Termination. Lessee is a municipal corporation and is governed by laws concerning public financing and budgeting. As such, the funds for said lease

payments are governed by the budget laws of the State of Oregon. Lessee may terminate this lease prior to the expiration of the lease, if budgeted funds for this lease, in any fiscal year, run out. If the lease is terminated under this Section, Lessee upon termination, shall pay a penalty to the Lessor equal to 1/2 the remainder of the lease payments which would have been paid had the lease not been terminated early. The Lessee will vacate the premises immediately. The Lessor shall make a good faith effort to re-let the premises. Eighty percent (80%) of any rent received by Lessor from re-letting the premises shall be paid to Lessee, during the time equal to 1/2 the remaining period of time that the lease would have been in effect if it would not have been terminated.

CITY OF NEWBERG

By

Donna Proctor
Mayor

By Authority of
Resolution No. 93-1790

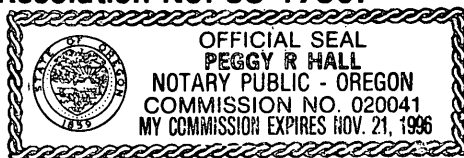
YOUNG & PAWELSKI HOMES, INC.

By

Joe Young, President

STATE OF OREGON, County of Yamhill): ss.

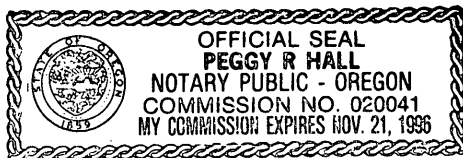
This instrument was acknowledged before me on August 20, 1993 by Donna Proctor, to me known to be the Mayor of the City of Newberg, by authority of Resolution No. 93-1790.



Peggy R. Hall
Notary Public for Oregon
My Commission Expires: 11/21/96

STATE OF OREGON, County of Yamhill) ss.

This instrument was acknowledged before me on August 20, 1993 by Joe D. Young, the President of Young & Pawelski Homes, Inc.



Peggy R. Hall
Notary Public for Oregon
My Commission Expires: 11/21/96