

CITY OF PORTLAND/DWIGHT ESTBY ENTERPRISES, INC.
LEASE AGREEMENT
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LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of the ____ day of _____, 1999, by and between the CITY OF PORTLAND (herein called "Lessor") a municipal corporation of the State of Oregon, and DWIGHT ESTBY ENTERPRISES, INC. (herein called "Lessee"), an Oregon corporation.

AGREED

In consideration of the leasing of the Premises described below and of the mutual agreements contained herein, each party expressly covenants and agrees as follows:

1. Premises:

Lessor owns and Leases to Lessee the land more specifically described as Tax Lot 2100 of Section 9, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon (herein called "Premises"), consisting of approximately 11,325 SF. For purposes of identification, this land is located West of SW Terwilliger Blvd. and South of SW Sam Jackson Road in Portland, Oregon, and is shown highlighted on the map attached and incorporated herein as Exhibit A.

2. Term:

The term of this Lease shall commence on April 1, 1998 and unless sooner terminated under the provisions of this Lease shall expire at midnight on June 30, 2003, which is a term of five years and two months.

3. Permitted Use:

The Premises shall be used, managed and operated by Lessee during the entire term of this Lease, for the following exclusive purpose and no other: ingress and egress into the adjacent parcel, Tax Lot 4600 of Section 9, Township 1 South, Range 1 East, which is the site of an automobile service station operated by Lessee. If this use is prohibited by law or governmental regulation, this Lease shall terminate. No other use shall be made of the Premises without the prior written consent of Lessor. Lessee shall conform to all applicable laws and regulations of any public authority affecting the Premises and correct at Lessee's own expense any failure of compliance created by the fault or use of the Lessee or its agents, employees, or invitees. Lessee is expressly prohibited from charging, assessing, or otherwise collecting a fee from third parties for use of all or a portion of the Premises.

4. Monthly Rent:

a. Lessee shall pay Lessor as rent for the Premises the sum of Six Hundred Dollars (\$600.00) per month, commencing April 1, 1998. Monthly rent shall be payable in advance on the first day of each calendar month throughout the term of this Lease. Monthly rent shall be paid without deduction or offset, prior notice or demand, and at such place or places as may be designated from time to time by Lessor. Monthly rent for the last month of the Lease term shall be prorated on a daily basis if the Lease terminates on a day other than the first day of the month.

b. No payment by Lessee or receipt by Lessor of a lesser amount than any installment or payment of rent due or other charges or fees shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check for payment of rent or other charges or fees shall be deemed an accord and satisfaction. Lessor may accept such check or payment without prejudice to Lessor's right to

recover the balance of such installment or payment of rent or other charges or fees or to pursue any other remedies available to Lessor.

5. Annual Expense Adjustment:

Two years after the commencement date of this Lease and at the end of each year thereafter during the term of this Lease, the monthly rent shall automatically be adjusted in proportion to the change in the Consumer Price Index for all Urban Consumers (CPI-U) All Items for the U.S. City Average as published by the Bureau of Labor Statistics of the U.S. Department of Labor. The Standard Reference for the CPI-U shall be 1982-1984=100 and January shall be the reference period from which changes in the Price Index will be measured. The annual percentage change in the monthly rent shall be the same as the annual percentage change in the Index. The monthly rent, when annually adjusted, shall continue to the next succeeding adjustment date when the monthly rent shall again be adjusted. If the aforementioned Index is discontinued, the Lessor shall specify and name a locally available comparable substitute. In no event shall this provision operate to decrease the monthly rent for the Premises below the previous year's monthly rent or below the original monthly rent of \$600.00

6. Taxes:

Lessee shall be responsible for and will pay before delinquent all taxes or fees levied and assessed during the term of this Lease against any leasehold or personal property of any kind owned by or placed upon or about the Premises by Lessee. Lessee shall be responsible for and will pay before delinquent one hundred percent (100%) of any and all real property taxes assessed and levied against the Premises during the term of this Lease and shall pay Lessor, in a lump sum, within thirty (30) days after Lessor bills Lessee. Notwithstanding Lessee's obligation to pay such taxes or assessments, Lessee shall, prior to the payment of any tax or assessment, be permitted to contest the amount of any tax or assessment so long as such contest is conducted in a manner which does not cause any risk that Lessor's interest in the Premises shall be foreclosed for nonpayment. The real property tax account number for the Premises is R-99109-0650. As used herein, the term "real property tax" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes or any tax on personal property which may be imposed by any city, county, state or federal government, or any special district or agency, and those taxes shall remain the responsibility of the Lessee.

7. Late Payment Penalty:

In addition to all of the remedies provided by this Lease, if any rent or other charge required by this Lease is not received by Lessor within ten (10) days of the due date, Lessor may impose a late payment penalty on Lessee in the amount equal to five percent (5%) of the amount of the delinquent rent or other charge for the month in which the rent or other charge is delinquent. The late fee penalty may only be charged once on any payment date. Lessee shall pay any late payment penalty immediately upon billing by Lessor. The imposition by Lessor and/or the payment by Lessee of any late payment penalty shall not waive or cure Lessee's default hereunder. Failure to impose a late payment penalty on one occasion does not effect a waiver of Lessor's right to impose a late payment penalty on subsequent delinquent payments.

8. Place of Payments:

Payments shall be made to the City of Portland at Portland Parks and Recreation, Attention: Property Manager, 1120 SW 5th Avenue, Room 1302, Portland, OR 97204-1933 or such other place as Lessor may designate in writing. All amounts not paid by Lessee when due shall bear interest at the rate allowed to be charged by the City of Portland City Code, currently at 1-1/2% per month. The interest rate of 1-1/2% on overdue accounts is subject to periodic adjustment to reflect Lessor's then current interest rate charged on overdue accounts.

9. Utilities:

Lessee shall pay or cause to be paid when due all charges and costs for all public and private utility services provided to the Premises. Lessee shall indemnify Lessor from any responsibility for any utility charges of any form, including but not limited to connection or hook-up charges and service charges, with respect to utilities provided to the Premises.

10. Acceptance of Premises:

Lessee has inspected and will accept the Premises in AS IS condition.

11. Maintenance and Repair:

Lessee shall at all times maintain the Premises and all improvements of any kind which may be erected, installed or made thereon by Lessee or Lessor, including landscaping, in good and substantial operable condition, order and repair. Lessee shall, at all times, keep the sidewalks in front of the Premises free and clear of ice, snow, rubbish, debris, and obstruction. Lessee shall hold harmless, defend and indemnify Lessor against any injury whether to Lessor or Lessor's property or to any person or other property caused by Lessee's failure to abide by the terms of this section.

12. Appearance:

Lessee shall at all times keep said Premises in a clean and sanitary condition, free of trash and debris, to the satisfaction of Lessor and in compliance with any laws, ordinances, or regulations. A primary consideration of the granting of this Lease is the Lessee's commitment to the installation and maintenance of new landscaping to be constructed at the Premises.

13. Observance of Lessor's Rules:

Lessee agrees to comply with all rules and regulations respecting use of the Premises promulgated by Lessor from time to time and communicated to Lessee in writing. Lessee shall permit Lessor to make reasonable inspection of the Premises from time to time to determine whether Lessee is complying with Lessor's rules and regulations and the provisions of this Lease. Lessor will attempt to give 24 hours written notice to Lessee of its intent to inspect the Premises except in the event of an emergency.

14. Improvements or Alterations:

a. Lessee shall perform demolition and site preparation and soil preparation and install planting of new landscaping including trees in strict accordance with the Texaco Station Remodel - Landscape Plan as developed by Kim Isaacson, Landscape Designer, a copy of which is attached as Exhibit D.

b. Lessee acknowledges the requirement for a high level of maintenance at the Premises and shall not allow the deterioration of any improvements on the Premises. Any additional alternations or improvements shall require Lessor's prior written approval.

15. Liens:

Lessee shall keep the Premises free from all liens, including mechanics' liens, arising from any act or omission of Lessee or those claiming under Lessee. Lessee shall pay as due all claims for work done, for services rendered or for material furnished to the Premises at its request. If Lessee fails to pay any claim or to discharge any lien, Lessor may do so and collect all costs of discharge, including its reasonable attorneys fees. Such action by Lessor shall not constitute a waiver of any right or remedy Lessor may have

on account of Lessee's default. Lessee may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of filing, execute a discharge of the lien or deposit with Lessor cash or a sufficient corporate surety bond or other security satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorneys fees or other charges that could accrue as a result of any foreclosure sale or sale under the lien. This Lease shall be subject and subordinate to such liens and encumbrances as are on or as Lessor may hereafter impose on the Premises and Lessee shall, upon request of Lessor, execute and deliver agreements of subordination consistent with this section.

16. Polystyrene Prohibition:

No products containing or composed of polystyrene foam shall be sold or used by Lessee, unless such products are exempted from this requirement by the Lessor. Exemptions will be based on a showing that there are no acceptable alternatives and that enforcement of this condition would cause undue hardship. This prohibition relates to the use of polystyrene by Lessee only on the Premises covered by this Lease.

17. Nuisance, Waste and Hazard:

Lessee shall not create a nuisance, commit or suffer any waste of the Premises or create or allow any condition which would constitute a fire hazard, impair the condition of the Premises or strength or durability of any improvements, or be dangerous to persons or property. No use may be made of, on or from the Premises relating to the handling, storage, disposal, transportation or discharge of hazardous or toxic wastes, substances, pollutants, or contaminants as those terms are defined by federal, state or local law or regulation. Lessee shall not use the Premises in such a way that the fire insurance rating on the Premises or any improvements is thereby increased or that would prevent Lessor from taking advantage of any ruling of any agency of the State of Oregon which would allow Lessor to obtain reduced premium rates for long-term fire insurance policies.

18. Signs and Attachments:

Lessee shall not, without Lessor's prior written consent, place any marks, signs, advertisement, notice, marquee, awning, decoration or any other device or attachment in, on or to the Premises or to the improvements Lessee constructs. Any sign or attachment placed upon the Premises by Lessee with Lessor's consent shall be removed at Lessee's expense upon termination of this Lease, and all damage caused by the removal shall be repaired at Lessee's expense.

19. Light and Air:

This Lease does not grant any rights of access to light or air over any part of the real property in which the Premises are located. Lessor shall not be liable for interference with light and air.

20. Eminent Domain:

a. Either party receiving any notice of an intended taking affecting the Premises or any portion thereof, any service of legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase or sale or transfer in lieu of condemnation shall promptly give the other party notice. For purposes of this Lease, taking or condemnation includes a sale to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power.

b. If all or a portion of the Premises is taken by a corporation or governmental authority having right of eminent domain, by exercise of that right or by purchase, whether the taking be a direct physical taking

or an indirect taking compensable by way of severance damages or the like, Lessor shall be entitled to all of the proceeds of the taking and Lessee shall have no claim against Lessor as a result of the taking except for a return of prepaid rent and any compensation for damages to Lessee's personal property, fixtures, or equipment. If the Premises remaining after the taking, if any, are sufficient for practical operation of Lessee's business, Lessor shall proceed as soon as reasonably possible to make necessary repairs comparable to that existing prior to the taking and Lessee shall pay as rent therefore the amounts reserved hereunder reduced commensurately with the reduction in value of the Leased Premises on account of the taking. Rent shall be abated to the extent that the Premises are usable for Lessee's business during such period of alteration and repair. If the Premises remaining are not sufficient for practical operation of Lessee's business, this Lease shall terminate as of the date possession of the Premises is taken.

21. Indemnification:

a. Lessee shall indemnify and hold harmless Lessor, its officers, agents and employees from any and all liability, damage, expenses, attorneys fees, causes of actions, suits, claims or judgments arising out of or connected with (i) the use, occupancy, management, or control of the Premises; (ii) any failure of Lessee to comply with the terms of this Lease or any violation of law or ordinance; and (iii) the acts or omissions of Lessee, its officers, directors, agents, employees, or invitees; provided, however, that Lessee shall not be liable for claims caused by the sole negligence of Lessor, its officers, agents or employees. Lessee shall, at its own cost and expense, defend any and all suits which may be brought against Lessee or Lessor, their officers, directors, agents or employees, either alone or in conjunction with others upon any such above-mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments, including attorneys fees and costs, that may be recovered against Lessor or Lessee, their officers, directors, agents and employees in any such action or actions in which they may be party defendants.

b. Lessor, its officers, agents and employees shall not be liable for any injury to the goods, stock, merchandise or any other property of Lessee or to any person in or upon the Premises including but not limited to damage by fire, explosion, gas, electricity, water or rain or any other cause, unless caused by or due to the sole negligence of Lessor, its officers, agents, and employees.

c. Lessee shall give Lessor prompt notice in case of casualty or accident on the Premises. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause other than Lessor's sole negligence, and Lessee waives all claims in respect thereof against Lessor.

d. Neither Lessor nor its officers, agents and employees shall be liable for any latent defect in the Premises. In addition to the indemnity provided above, Lessee agrees to indemnify, defend and hold harmless Lessor and its officers, agents and employees from and against all damages, costs, liabilities and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation, or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials, or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency.

e. Lessee shall indemnify, defend and hold harmless Lessor, its officers, agents and employees from and against any and all environmental losses. Environmental losses shall mean any and all losses, claims, demands, penalties and fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature including attorneys fees, fees of environmental consultants and laboratory fees, known or unknown, contingent or otherwise arising or demonstrated to have arisen from and after the commencement date of this Lease in any way related to (i) the presence, disposal, release or threatened release of any Hazardous Substance on, over, under, from or affecting the Leased Premises or any soil, water, vegetation, buildings, personal property, persons or animals therein; (ii) any personal injury including wrongful death or

real or personal property damage arising out of or related to such Hazardous Substances; (iii) any lawsuit brought or threatened, settlement reached or governmental order relating to such Hazardous Substances with respect to the Leased Premises; (iv) any violation of laws, orders, regulations, requirements or demands of government authorities or any policies or requirements of Lessor, which are based upon or in any way related to such Hazardous Substances; and or (v) the breach of any warranty, representations or covenant contained in this Lease. Hazardous Substance or Substances shall be defined as written in ORS 465.200 (15).

22. Liability Insurance:

a. Lessee shall maintain comprehensive general liability and property damage insurance including automobile liability insurance and fire legal liability endorsement that protects Lessee and Lessor and their officers, directors, agents and employees from any and all risks, claims, demands, actions, and suits for damage to property including, without limitation, cracking or breaking of glass, or personal injury, including death, arising directly or indirectly from Lessee's activities or any condition of the Premises, whether or not related to an occurrence caused or contributed to by Lessor's negligence. The insurance shall protect Lessee against the claims of Lessor on account of the obligations assumed by Lessee under this Lease and shall protect Lessor and Lessee against claims of third persons. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damages; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Lease. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds Lessor and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one party or one interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to termination of the Lease, Lessee shall provide a new policy with the same terms. Lessee agrees to maintain continuous, uninterrupted coverage for the duration of the Lease. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Lessee.

b. Lessee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required by subsection A. of this Section. A copy of this certificate is attached as Exhibit B. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Lease by Lessor.

23. Workers' Compensation Insurance:

a. Lessee, its sublessees, if any, and all employees working under this Lease are subject employers under the Oregon Worker's Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Lease as Exhibit C, if applicable, and shall be incorporated herein and made a term and part of this Lease. Lessee further agrees to maintain workers' compensation insurance coverage for the duration of this Lease.

b. In the event Lessee's workers' compensation insurance coverage is due to expire during the term of this Lease, Lessee agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and Lessee agrees to provide Lessor such further certification of workers' compensation insurance as renewals of said insurance occur.

24. Damages:

In the event of termination or default, Lessor shall be entitled to request immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Lease term, the reasonable cost of re-entry and reletting, including, without limitation, the cost of any cleanup, removal of Lessee's property, or any other expense occasioned by Lessee's failure to quit the Premises upon termination or to leave them in the required condition, plus the cost of any repairs, attorneys fees, court costs, and advertising costs.

25. Assignment and Subletting:

Lessee shall not assign or mortgage this Lease or any interest herein and shall not sublet the Premises or any part thereof, or any right or privilege pertinent thereto and shall not sell or otherwise transfer any ownership interest in any corporate Lessee or permit any other person (the officers, directors, agents, employees and invitees of Lessee excepted) to occupy or use the Premises or any portion thereof, without first obtaining the written consent of Lessor. Consent by Lessor to one assignment, subletting, transfer, occupation or use by another party shall not be deemed to be a consent to any subsequent assignment, subletting, transfer, occupation or use by another party. Consent to an assignment, sublet, transfer, occupation or use shall not re-lease the original named Lessee from liability for the continued performance of the terms and provisions on the part of Lessee to be kept and performed, unless Lessor specifically and in writing releases the original named Lessee from liability. Any assignment, subletting, transfer, occupation or use without the prior written consent of Lessor shall be void and shall, at the option of Lessor, terminate this Lease. This Lease shall not, nor shall any interest herein, be assignable, as to the interest of Lessee, by operation of law without the prior written consent of Lessor. Lessor shall not unreasonably withhold its consent to any assignment, subletting, transfer, occupation or use provided the rent paid by the assignee or subtenant is not less than the rent required by this Lease and the proposed Lessee is compatible with Lessor's normal standards for the Premises. If Lessee proposes an assignment, subletting, transfer, occupation or use to which Lessor is required to consent under this Section, Lessor shall have the option of terminating this Lease and dealing directly with the proposed assignee, subtenant or any third party. If an assignment, subletting, transfer, occupation or use is permitted, any cash profit or the net value of any other consideration received by Lessee as a result of such transaction, shall be paid to Lessor promptly following its receipt by Lessee. Lessee shall pay any costs incurred by Lessor in connection with a request for assignment, subletting, transfer occupation or use including reasonable attorneys fees.

26. Assignability:

The covenants and conditions herein contained subject to the provisions as to Assignment and Subletting, apply to and bind the heirs, successors, executors, administrators and assigns of the parties.

27. Default by Lessee:

The following shall be events of default:

a. Failure of Lessee to pay any rent or other charge required by the Lease within ten (10) days after it is due;

b. Failure of Lessee to comply with any term or condition or fulfill any obligation of this Lease other than payment of rent or other charges, within ten (10) days after written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the ten (10) day period, this provision shall be complied with if Lessee begins correction of the default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to correct the default as soon as practical;

c. The abandonment of the Premises by Lessee or the failure of Lessee of fifteen (15) days or more to occupy the Premises for the designated purpose of this Lease unless such failure is excused under other provisions of this Lease;

d. The bankruptcy or insolvency of Lessee or if a receiver or trustee is appointed to take charge of any of the assets of Lessee, sub-lessees or assignees in or on the Premises and such receiver or trustee is not removed within thirty (30) days after the date of appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against Lessee or any sub-lessee or assignee thereunder.

28. Remedies on Default by Lessee:

a. In the event of a default, Lessor may elect to terminate Lessee's right to possession of the Premises by notice to Lessee. Following such notice, Lessor may re-enter, take possession of the Premises and remove any persons or property by legal action or self-help, with the use of reasonable force and without liability for damages. Lessor shall have a security interest in Lessee's property on the Premises at the time of re-entry to secure all sums owed or to become owing to Lessor under this Lease. Perfection of such security interest shall be taking possession of the property or otherwise as provided by law.

b. Following re-entry by Lessor because of Lessee's default, Lessor may re-let the Premises for a term longer or shorter than the term of this Lease and upon any reasonable terms, including the granting of rent concessions to the new Lessee. Lessor may alter, refurbish, or change the character or use of the Premises in connection with such re-letting. No such re-letting by Lessor following Lessee's default shall be construed as an acceptance or a surrender of the Premises. If rent received upon re-letting exceeds the rent received under this Lease, Lessee shall have no claim to the excess.

c. Following re-entry, Lessor shall have the right to recover from Lessee the following charges:

(i) All unpaid rent or other charges for the period prior to re-entry, plus late charges as provided by this Lease;

(ii) An amount equal to the rent lost during any period in which the Premises are not re-let if Lessor continuously uses reasonable efforts to re-let the Premises during such period. Lessor's listing of the Premises with a real estate broker experienced in leasing commercial properties in the area of the Premises shall constitute the taking of reasonable efforts to re-let the Premises;

(iii) All costs incurred by Lessor by reason of Lessee's default including, but not limited to, the cost of recovering the Premises, of a re-letting or attempting to re-let the Premises, including without limitation the cost of clean up and repair and preparation for a new Lessee, the cost of correcting any defaults or restoring any unauthorized alterations and the amounts of any real estate commissions or advertising expenses and the unamortized cost of any improvements installed at Lessor's expense to meet Lessee's special requirements;

(iv) The difference between the rent provided by this Lease and the amount actually received by Lessor upon any re-letting;

(v) Reasonable attorneys fees incurred in connection with the default, whether or not any litigation has commenced.

d. Lessor may institute actions periodically to recover damages as they accrue throughout the Lease term and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. Nothing in this Lease shall be deemed to require Lessor to wait until the Lease expires to institute action. Lessor may obtain a decree of specific performance requiring Lessee to pay damages as they accrue. Alternately, Lessor may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the Lease equal to the difference between the rent under this Lease and the reasonable

rental value of the Premises for the remainder of the term, discounted to the time of judgment at the rate of six percent (6%) per annum.

e. In the event that Lessee remains in possession following default and Lessor does not elect to re-enter, this Lease will remain in effect and Lessor may enforce all of its rights and remedies hereunder and Lessor may recover all unpaid rent or other charges, plus late charges, and shall have the right to cure any non-monetary default and recover the cost of such cure from Lessee. In addition, Lessor shall be entitled to recover attorneys fees reasonably incurred in connection with the default, whether or not litigation has commenced. Lessor may institute actions to recover such amounts as they accrue and no one action for accrued damages shall bar a later action for damages subsequently accruing.

f. The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law, and no election to pursue one remedy shall preclude resort to another consistent remedy. Lessee's liability to Lessor for default shall survive termination of this Lease.

29. Entry by Lessor:

In the event Lessor, during the term of this Lease, shall be required by the City of Portland, the order or decree of any court, or any other governmental authority, to repair, alter, remove, reconstruct, or improve any part of the Premises, then the repairing, alteration, removal, reconstruction, or improvement may be made by and at the expense of Lessor without any interference or claim for damages by Lessee, but Lessee shall be entitled to an abatement or adjustment of rent in proportion to the interference with Lessee's occupation of the Premises. Lessor and Lessor's agents and employees shall have the right from time to time during the term of this Lease to enter into and upon the Premises for the purpose of inspecting the Premises and making such alteration and repairs and doing such other things to the Premises as may become necessary or advisable, without any interference or claim for damages by Lessee.

30. Default by Lessor. Remedies:

Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time. Lessor shall perform its obligations within thirty (30) days after receiving written notice from Lessee specifying where and how Lessor has failed to perform its obligations. However, if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Lessee have the right to terminate this Lease as a result of Lessor's default and Lessee's remedies shall be limited to damages and/or an injunction.

31. Lessor's Inability to Perform:

Lessor shall not be deemed in default for the nonperformance or for any interruption or delay in performance of any of the terms, covenants and conditions of this Lease if due to any labor dispute, strike, lockout, civil commotion or operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, or through an act of God or other cause beyond the reasonable control of Lessor, providing such cause is not due to the willful act or neglect of Lessor.

32. Succession:

Subject to the above stated limitations on transfer of Lessee's interest, this Lease shall be binding upon and inure to the benefit of the parties, their respective successors, and assigns.

33. Termination:

Lessor shall have the right to terminate this Lease without further obligation upon giving ninety (90) days' written notice to Lessee, in the event the Leased Premises or any portion thereof is required for public purposes. Lessee shall have the right to terminate this Lease on any yearly anniversary date by giving thirty (30) days' prior written notice to Lessor of its intention to so terminate.

34. Holding Over:

If Lessee shall hold over after the expiration of the term of this Lease and shall not have agreed in writing with Lessor upon the terms and provisions of a new Lease prior to such expiration, Lessee shall remain bound by all the terms, covenants and conditions hereof, except that the tenancy shall be one from month to month and the rent shall be 1-1/2 times the total rent being charged when the Lease term expires.

35. General Provisions:

a. Cumulative Rights and Remedies: No right or remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other rights and remedies at law or in equity.

b. Attorney Fees: In the event that suit, action or appeal is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover costs and such sums as the court may judge reasonable as attorney fees, including any such costs and attorney fees on appeal.

c. Time of the Essence: Time is of the essence in this Lease.

d. Non-Waiver: Acceptance by Lessor of any rental or other benefits under this Lease shall not constitute a waiver of any default. Any waiver by Lessor of the strict performance of any of the provisions of this Lease shall not be deemed to be a waiver of subsequent breaches of a different character, occurring either before or subsequent to such waiver, and shall not prejudice Lessor's right to strict performance of the same provision in the future or of any other provision of this Lease.

e. Amendments: This Lease shall not be amended or modified except by agreement in writing signed by the parties.

f. Grammatical Changes: Wheresoever the words Lessor or Lessee are used herein, it relates also to the Lessor or Lessee jointly and severally, if there may be more than one Lessee or Lessor herein, and to their respective heirs, personal representatives, successors in interests and assigns; and the pronouns used herein shall be construed as the context and the sense and general purport of this instrument may require.

g. Exhibits: Exhibits which are referred to in this Lease are attached hereto and by this reference incorporated herein.

h. Authority of Lessee: If Lessee is a corporation, each individual executing this Lease on behalf of that corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of the corporation, in accordance with the bylaws of the corporation, and the corporation warrants and represents that this Lease is binding on the corporation.

i. Consent of Lessor: Whenever consent, approval or direction by Lessor is required under the terms contained herein, all such consent, approval or direction must be in writing from the Director of Portland Parks and Recreation or a person designated in writing by the Director.

j. Quiet Possession: Upon Lessee paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof, subject to all provisions of this Lease.

k. Recordation: Neither Lessor nor Lessee shall record this Lease, but a short form memorandum hereof may be recorded at the request of the Lessor or Lessee. Such short form memorandum must be approved in writing by the City Attorney prior to recordation.

l. Section Headings: The section headings to the Sections of this Lease are not part of the Lease and shall have no effect upon the construction or interpretation of any part of it.

m. Complete Agreement: This Lease constitutes the complete and final agreement of the parties with respect to matters covered by this Lease and it supersedes and replaces all prior written or oral agreements.

n. Joint Obligation: If there be more than one Lessee, the obligations imposed hereunder shall be joint and several.

o. Third Parties: Lessor and Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct or indirect or otherwise, to third parties unless third persons are expressly described as intended to be beneficiaries of its term.

p. Partial Invalidity: Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and all other provisions shall remain in full force and effect.

q. Observance of Law: Lessee, at Lessee's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities now in force or which may hereafter be in force during the term of this Lease including, but not limited to, the Americans with Disabilities Act of 1990, which shall impose any duty upon Lessor or Lessee with respect to the use, occupation or alteration of the Premises.

r. Choice of Law and Forum: This Lease shall be governed and interpreted under the laws of the State of Oregon. Any litigation between Lessor and Lessee arising under this Lease shall occur, if in the state courts, in the Multnomah County court having jurisdiction thereof; and, if in the federal courts, in the United States District Court.

36. Notices:

Any notices required or permitted by law or this Lease to be given to either party shall be sufficiently given if sent by United States first class mail addressed as specified below, or to such other address as either party may specify to the other in writing from time to time during the term of this Lease:

173366

TO Lessor:

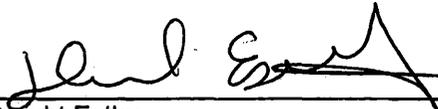
CITY OF PORTLAND
PARKS & RECREATION
Attn: Property Manager
1120 SW Fifth Avenue, Room 1302
Portland, OR 97204-1933

TO Lessee:

DWIGHT ESTBY ENTERPRISES, INC.
Attn: Dwight Estby, President
874 SW Baseline Rd.
Hillsboro, OR 97123

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease Agreement in duplicate on the day and year first herein written, a corporate signature of Lessee being by authority of the Board of Directors of the executing corporation.

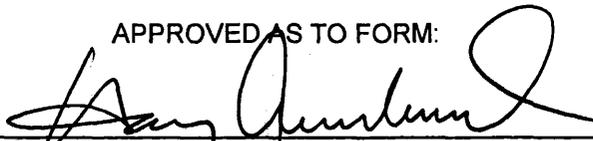
Lessee: DWIGHT ESTBY ENTERPRISES, INC.

By: 
Dwight Estby
President
Date: 4-20-99

Lessor: CITY OF PORTLAND

By: _____
Jim Francesconi
Its: Commissioner of Public Utilities
Commissioner of Parks and Recreation
Date: _____

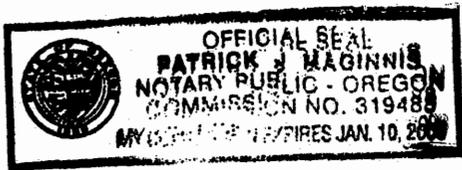
APPROVED AS TO FORM:


Deputy City Attorney

STATE OF OREGON)
)ss
COUNTY OF WASHINGTON)

On the 20th day of April, 1999, before me personally appeared Dwight Estby, to me known to be the President of Dwight Estby Enterprises, Inc., the Corporation that executed the within and foregoing Lease Agreement, and acknowledged the said instrument to be the free and voluntary act and deed of said Corporation for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

IN WITNESS HEREOF, I have hereunto set my hand and affixed by official seal the day and year first above written.



[Signature]
Notary Public in and for the
State of Oregon
My Commission Expires: 01-10-03

STATE OF OREGON)
)ss
COUNTY OF MULTNOMAH)

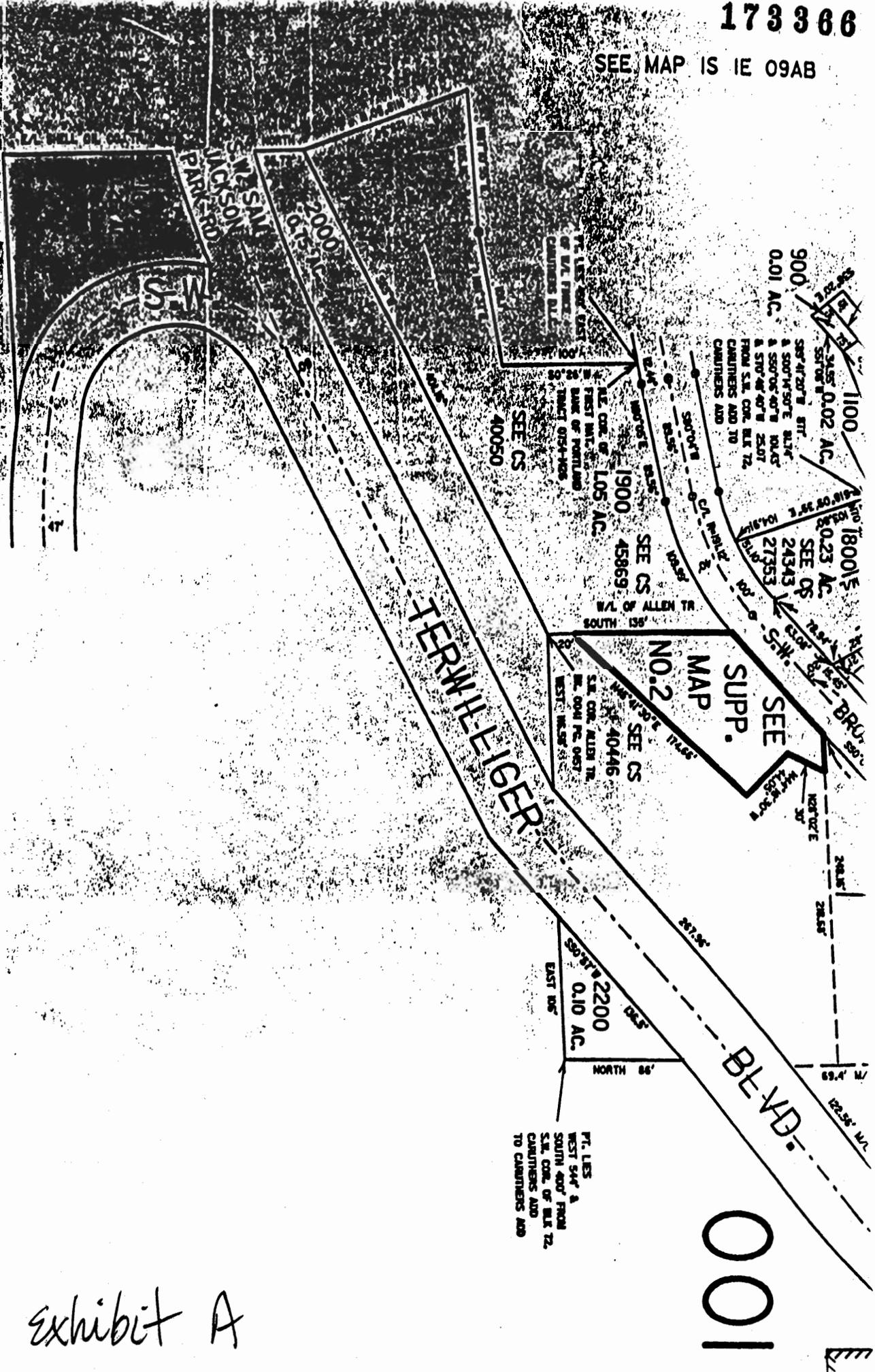
The foregoing instrument was acknowledged before me this _____ day of _____, 1999 by Jim Francesconi, Commissioner of Public Utilities and Commissioner of Parks and Recreation for the City of Portland, a Municipal Corporation of the State of Oregon, on behalf of the City of Portland.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the
State of Oregon
My Commission Expires: _____

173366

SEE MAP IS IE 09AB



001

exhibit A

SEE MAP IS IE

PT. LIES
WEST 544' &
SOUTH 400' FROM
S.W. COR. OF B.L.K. 72.
CANTONERS ADD
TO CANTONERS ADD

EAST 106'
2200
0.10 AC.

SEE CS
NO. 2
S.W. COR. ALLEN TR.
BL. 0041 PG. 0487
WEST 1858'

SEE CS
40050

SEE CS
1900
45869
NE COR. OF
FIRST B.L.K.
BANK OF PORTLAND
TRACT 075-4-068

SEE CS
1100
0.02 AC.
S 89° 42' 20" B. 814'
& S 00° 05' 40" B. 80.43'
& S 70° 46' 40" B. 25.07'
FROM S.W. COR. B.L.K. 72.
CANTONERS ADD TO
CANTONERS ADD

SEE CS
1800 1/2
0.23 AC.
24343
27353
S 89° 42' 20" B. 814'
& S 00° 05' 40" B. 80.43'
& S 70° 46' 40" B. 25.07'
FROM S.W. COR. B.L.K. 72.
CANTONERS ADD TO
CANTONERS ADD

SEE CS
NO. 2
S.W. COR. ALLEN TR.
BL. 0041 PG. 0487
WEST 1858'

24343
27353
S 89° 42' 20" B. 814'
& S 00° 05' 40" B. 80.43'
& S 70° 46' 40" B. 25.07'
FROM S.W. COR. B.L.K. 72.
CANTONERS ADD TO
CANTONERS ADD

NORTH 86'
2200
0.10 AC.

PT. LIES
WEST 544' &
SOUTH 400' FROM
S.W. COR. OF B.L.K. 72.
CANTONERS ADD
TO CANTONERS ADD

173366

ORDINANCE No.

As Amended

*Lease land south of SW Sam Jackson Park Road and west of SW Terwilliger Blvd. to Dwight Estby Enterprises, Inc. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City owns 11,325 SF of land at the intersection of SW Sam Jackson Park Road and SW Terwilliger Blvd, which is assigned to Parks and Recreation. Its legal description is Tax Lot 2100 of Section 9, T1S, R1E, Multnomah County. This parcel of vacant land is adjacent to land at 2800 SW Sam Jackson Park Road that is leased by its owner to Dwight Estby Enterprises, Inc. for use as a neighborhood service station.

2. In order for delivery vehicles to access the service station property, Mr. Estby needs access over the park property and Parks staff has negotiated a lease agreement with Dwight Estby Enterprises, Inc. that allows him to use the park property for ingress and egress purposes. There is to be no other use of the park property.

3. The lease agreement is for a five year term, beginning April 1, 1998 and terminating June 30, 2003. Lease payments begin at \$600 per month and at the end of two years are escalated each year in accordance with increases in the CPI. Of significant benefit to Parks is Mr. Estby's requirement to landscape the park property in accordance with a landscape design plan. The new landscaping will improve the appearance of the park property at this highly visible intersection. Mr. Estby is to landscape the park property by the end of 1999 in accordance with the landscaping design plan.

4. The Director of Portland Parks and Recreation recommends approval of the lease agreement with Dwight Estby Enterprises, Inc.

NOW, THEREFORE, the Council directs:

a. the Commissioner of Public Utilities to execute an agreement, a copy of which is attached as Exhibit A, with Dwight Estby Enterprises, Inc. for lease of park property at SW Sam Jackson Park Road and SW Terwilliger Blvd.

b. the rental revenue from the lease agreement to be deposited in the General Fund.

Section 2. The Council declares that an emergency exists because this Ordinance is necessary for the lease of park property, and in order that the lease can be made a matter of public record without delay, this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council,

MAY 12 1999

GARY A. BLACKMER
Auditor of the City of Portland
By

Deputy

Commissioner Jim Francesconi
Susan Hathaway-Marxer
May 12, 1999

Britta Olson

662

Agenda No.

173366

ORDINANCE NO.

As Amended

Title

*Lease land south of SW Sam Jackson Park Road and west of SW Terwilliger Blvd. to Dwight Estby Enterprises, Inc. (Ordinance)

INTRODUCED BY	Filed:
Commissioner Francesconi	MAY 7 1999
NOTED BY COMMISSIONER	Gary A. Blackmer Auditor of the City of Portland
Affairs	By: <u>Gary Kershner</u> Deputy
Finance and Administration	For Meeting of:
Safety	Action Taken:
Utilities <i>scf/lyk</i>	<input type="checkbox"/> Amended
Works	<input type="checkbox"/> Passed to Second Reading _____
BUREAU APPROVAL	<input type="checkbox"/> Continued to:
Bureau: Parks & Recreation	
Prepared by Date Susan Hathaway-Marxer May 5, 1999	
Budget Impact Review:	
<input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not Required	
Bureau Head: <i>Charles Jordan</i> Charles Jordan	

AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
		YEAS	NAYS
Consent Regular <input checked="" type="checkbox"/>			
NOTED BY	Francesconi	Francesconi	✓
City Attorney	Hales	Hales	✓
City Auditor	Saltzman	Saltzman	✓
City Engineer	Sten	Sten	✓
	Katz	Katz	✓