

LEASE AGREEMENT

## MORRISON PARK EAST

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## LEASE AGREEMENT

THIS LEASE, made and entered into this 1st day of June 1986 by and between the CITY OF PORTLAND, a Municipal Corporation, State of Oregon, hereinafter referred to as Lessor, and VICTORIA S MARIHART AND CHARLOTTE A SMITH, hereinafter referred to as Lessee,

## WITNESSETH

Lessor hereby leases to Lessee, and Lessee hereby leases from lessor that certain real property situated in the City of Portland, County of Multnomah, State of Oregon, described as 317 SW Morrison upon the terms, conditions, and covenants hereinafter set forth. The location of the leased premises is outlined in red on Exhibit "A."

## 1. TERM

The term of this lease shall commence June 1, 1986 and shall terminate on May 31, 1989. Lessee shall have the right prior to the commencement date to enter upon the leased premises at such reasonable times as designated by the Lessor for the purpose of installing the furniture, furnishings, fixtures and equipment which the Lessee is required to install pursuant to the terms of this lease. No such equipment shall be acquired or installed until the Lessee submits to Lessor layouts, drawings and descriptions of the decor, all of which are to be approved in writing by Lessor in a reasonable amount of time prior to any improvements being placed by the Lessee upon the leased premises.

## 2. RENT

- A. Guaranteed minimum monthly rental. Lessee shall pay the Lessor as minimum monthly rental for the leased premises the sums cited in the following schedule:

<u>Period</u>	<u>Guaranteed Minimum Monthly Rent</u>
07/01/86--08/31/86	\$0.00
09/01/86--11/31/86	\$697.12
12/01/86--05/31/89	\$929.50

which sum shall be paid in advance on the first day of each calendar month throughout the term of this lease. Said rental shall commence upon the commencement of the term of this lease as set forth in Paragraph 1 hereof with proration of rentals for any partial calendar month of the term hereof. All rentals to be paid by Lessee to Lessor shall be in lawful money of the United States of America and 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.

- B. (1) In addition to the minimum monthly rental hereinabove agreed to be paid by Lessee, Lessee shall and will pay to Lessor at the time and in the manner herein specified an additional rental in the amount equal to six percent (6%) of the amount of Lessee's gross sales made in, upon or from the leased premises during each calendar year of the term hereof or portion thereof, less the aggregate amount of the minimum guaranteed monthly rental previously paid by Lessee for said calendar year, or portion thereof.
- (2) Within ten (10) days after the end of each calendar month of the term hereof, commencing with the tenth day of the month following the commencement of the rental (as hereinabove provided), and ending with the tenth day of the month next following the last month of the lease term, Lessee shall furnish to Lessor, a statement in writing, certified by Lessee to be correct, showing the total gross sales made in, upon, or from the leased premises during the preceding calendar month, and shall accompany each such statement with a payment to Lessor equal to six percent (6%) of the total monthly gross sales made in, upon, or from the leased premises during each calendar month, less the minimum guaranteed rent for each such calendar month, previously paid. Within twenty (20) days after the end of each calendar year of the term hereof, Lessee shall furnish to Lessor a statement in writing, certified by Lessee to be correct, showing the total gross sales by months made in, upon, or from the leased premises during the preceding calendar year, at which time an adjustment shall be made between Lessee and Lessor to the end that the total percentage rent paid for each such calendar year shall be a sum equal to six percent (6%) of the total gross sales made in, upon, or from the leased premises during each calendar year of the term hereof, less the minimum guaranteed rent for each such calendar year, if previously paid, so that the percentage rent, although payable monthly shall be computed and adjusted on an annual basis.
- (3) The term "gross sales" as used in this lease shall include the entire gross receipts of every kind and nature from sales and services made in, upon, or from the leased premises, whether upon credit or for cash, in every department operating in the leased premises, whether operated by the Lessee or by a sub-lessee or sub-lessees, or by concessionaire or concessionaires, excepting therefrom any rebate and/or refunds to customers. Sales upon credit shall be deemed cash sales and shall be included in the gross sales for the period which the merchandise is delivered to the customer, whether or not title for the merchandise passes with delivery.
- (4) The Lessee shall keep full, complete and proper books, records and accounts of its daily gross sales, both for cash and on credit, of each separate department and concessionaire at any time operated in the leased premises. The Lessor, its agents and employees shall have the right at any and all times with reasonable written

notification, during regular business hours, to examine and inspect all of the books and records of the Lessee, including any tax reports pertaining to the business of the Lessee conducted in, upon, or from the leased premises, for the purpose of investigating and verifying the accuracy of any statement of gross sales. The Lessor may once in any calendar year cause an audit of the business of Lessor to be made by a certified public accountant of Lessor's selection and if the statement of gross sales previously made to Lessor shall be found to be inaccurate, then in that event, there shall be an adjustment and one party shall pay to the other on demand such sums as may be necessary to settle in full the accurate amount of said percentage rent that should have been paid to Lessor for the period or periods covered by such inaccurate statement or statements. If said audit shall disclose an inaccuracy greater than two percent (2%) with respect to the amount of gross sales reported by Lessee for the period of said report, than the Lessee shall immediately pay to Lessor, the cost of such audit, otherwise, the cost of such audit shall be paid by Lessor. If such audit shall disclose any willful or substantial inaccuracies this lease may thereupon be cancelled and terminated, at the option of Lessor.

### 3. PERMITTED USE

The leased premises shall be used, managed and operated by Lessee continuously at all customary hours for comparable businesses during the entire term hereof, for the following exclusive purposes and none others: Retail, wholesale, and mail order bakery.

Lessee shall do business on the leased premises under the name of: Stringham & Smith Company and shall operate such premises during the entire term of this lease with due diligence and efficiency so as to produce all of the gross receipts which may be produced by such manner of operation, unless prevented by causes beyond Lessee's control.

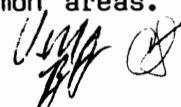
### 4. SECURITY DEPOSIT

Upon execution of this lease, Lessee shall pay Lessor a sum equal to the last month's minimum rental of the term hereof, to-wit: the sum of Nine Hundred twenty-nine and 50/100 (\$929.50) dollars as security for the fully paid performance by Lessee of all of the covenants and terms of this lease required to be performed by Lessee. Such security deposit shall be returned to Lessee after the expiration of this lease, provided Lessee has fully and faithfully carried out all of its terms, including the payment of all amounts due Lessor hereunder and the surrender of the premises to Lessor in the condition required herein. However, Lessor, at its option may apply such sums on account of the payment of the last month's rental hereunder. Said sum may be co-mingled with other funds of Lessor and shall bear no interest.

## 5. ACCEPTANCE OF PREMISES

The Lessee has examined the Premises and accepts them as they now are, except the awning which is to be replaced in a reasonable period of time. No representations or warranties as to the condition of the premises have been made by the Lessor or its agents. All furnishings, appliances, fixtures, improvements, surface coverings, decoration and other contents of the leased premises shall be provided by Lessee at its own expense.

## 6. COMMON AREA CHARGES

Lessee shall pay to Lessor four and 75/100 percent (4.75%) of the common area charges which are defined as Lessor's direct, out-of-pocket costs incurred for repairs, maintenance, security and operation of common areas, including but not limited to lighting, cleaning, painting, security service, utilities and maintenance (including repair of paving, curbs, walkways), landscaping, drainage, and garbage collection, as may be from time to time necessary to keep the same in good repair, plus fifteen percent (15%) of such sum to cover Lessor's indirect costs. Such costs and expenses may include real property taxes. The term "common area" means all areas on the real property described on page 1 hereof used or intended to be used from time to time in common by Lessees of said property or by customers or invitees of such Lessee's, including but not limited to the common arcades, walkways, service corridors, restrooms, curbs, equipment pertinent to and constituting a part thereof. Lessor shall notify Lessee of the estimated monthly amount to be paid by Lessee for its share of the common area charges, and Lessee shall pay Lessor such estimated amounts at the same time as and together with Lessee's minimum monthly rental. Lessor may from time to time, by notice to Lessee, change the estimated monthly amount to be paid based upon Lessor's actual costs and expenses. Lessor shall within forty-five (45) days following the end of each calendar year during the term of this lease, determine and furnish Lessee a statement showing in reasonable detail the actual costs and expenses of maintaining said common areas during the preceding calendar year (or partial year thereof) together with a computation of the charge or credit to the Lessee for any difference between actual costs and estimated costs paid by Lessee for such period; and any such difference shall be paid or reimbursed within ten (10) days after Lessor gives Lessee notice thereof. Lessee's obligation for its share of the common area charges for any calendar year shall be prorated as of the commencement date of and the expiration date of the term of this lease. The determination of the certified public accountant then servicing Lessor shall be conclusive each year of the actual costs and expenses of maintaining said common areas. Common area and insurance charges for 1985 equal \$ 1.41 sf. 

## 7. REAL PROPERTY TAXES

Lessee shall be responsible for and will pay before delinquent all taxes assessed during the term of this lease against any leasehold or personal property of any kind owned by or placed upon or about the leased premises by Lessee. In addition to the rental provided in this lease, Lessee shall pay four and 75/100 percent (4.75%) of any real property taxes assessed and levied on the real property and improvements known and described as Morrison Park East.

However, the amount to be paid shall be reduced by 1/12 for each month during any real property tax year not within the term of this lease. Any such payment shall be paid by Lessee to Lessor monthly, in addition to the guaranteed minimum monthly rent. The ~~1986/86~~ <sup>1985/86</sup> property taxes equal \$37,324.55. *V. M. B. J.*

#### 8. OBSERVANCE OF LAW

Lessee shall conform to all applicable laws and regulations of any public authority affecting the premises and the use and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use.

#### 9. OBSERVANCE OF LESSOR'S RULES

Lessee agrees to comply with all rules and regulations respecting use of the leased premises and the common areas promulgated by Lessor from time to time and communicated to Lessee in writing. Lessee further agrees that without first obtaining Lessor's written consent, it will not make any additions, alterations or changes to the leased premises or its content. Lessee shall permit Lessor to make reasonable inspection of the leased premises from time to time to determine whether Lessee is complying with Lessor's rules and regulations and the provisions of this lease.

#### 10. NUISANCE, WASTE, AND HAZARD

Lessee shall refrain from any use which would be offensive to Lessor, or other Lessees of Lessor, or owners or users of nearby premises or which would create a nuisance or damage the reputation of the premises; from committing or suffering any strip or waste of the premises; from creating or permitting to be created any condition which would constitute a fire hazard or impair the strength or durability of the structure or be dangerous to persons or property.

#### 11. MAINTENANCE OR REPAIR

A. Except for repairs which are Lessor's responsibility, Lessee shall at all times maintain the premises in a neat condition, free of trash and debris, in good order and repair. Lessee's responsibility to the leased premises shall include, without limitation, the following:

- (1) Performance of all necessary maintenance and repair upon the electrical fixtures, switches, and wiring from the Lessee's service panel, doors, windows or related hardware and exposed plumbing, indoor suspended ceilings, walls and floors;
- (2) Replacement of all broken or cracked glass with glass of quality equal to that existing at the commencement of the term;
- (3) Performance of all routine maintenance and repairs and inspections upon the mechanical equipment including any heating or air conditioning unit located within the leased premises.

- B. Subject to the limitations in Paragraph 11(C) of this lease, Lessor shall maintain in serviceable condition the roof, exterior walls and concealed plumbing in the premises and building, and shall make any major replacement of the mechanical equipment including any heating or air conditioning unit not made necessary by Lessee's negligence, misuse or failure to comply with any provisions of this lease. No rent abatement shall occur because of Lessee's inability to use the heating or air conditioning units or elevators during periods when repairs or replacement are being performed by Lessor.
- C. Lessor shall have no duty to make any repairs which are its obligations under this lease until Lessee shall have given written notice to Lessor of the repairs to be made or condition to be corrected. Lessor shall have no liability for failure to make any repair required of it if the repair is completed with a reasonable time following the notice from Lessee.

## 12. UTILITIES

Lessee shall pay promptly when due all charges for light, heat, water, garbage collection, janitorial service, sewage disposal or other utilities of any kind furnished to the premises. If any utility services are provided by or through Lessor, charges to Lessee shall be comparable with prevailing rates for comparable services. If Lessor receives and pays bills for any utilities to the premises, Lessee shall reimburse Lessor upon demand.

## 13. SIGNS AND ATTACHMENTS

Lessee shall not, without Lessor's prior written consent, place any signs, advertisement, notice, marquee, awning, decoration, aerial, or attachment in, on or to the roof, front, windows, doors or exterior walls of the leased premises or the building. Any such 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 Lessor's expense.

## 14. LIABILITY OF LESSOR, IDEMNIFICATION

Lessee will defend, indemnify, and hold Lessor harmless from any liability or loss or damage Lessor may suffer (including reasonable attorneys' fees and expenses) as a result of claims, demands, costs, or damages against Lessor of any kind whatsoever in connection with or arising out of (1) any violation of law, ordinance or covenant or condition of this lease by Lessee, its agents, employees, invitees, or visitor or (2) any injury or damage occurring to any person or to property of any kind belonging to any person from any cause or causes whatsoever while on or in any way connected with any portion of the premises during the Lease Term. However, this provision shall not be construed to relieve Lessor from responsibility for any loss or damage caused to Lessee or others solely as a result of negligence or willful acts of Lessor or its employees.

## 15. INSURANCE

Before going into possession of the premises, the Lessee shall at its own expense procure and thereafter during the term of this lease shall continue to carry the following insurance coverage, with an insurance carrier satisfactory to Lessor, naming Lessor as an additional insured:

- A. Public liability and property damage insurance with a responsible company with limits of not less than \$300,000 combined single limit for personal injury and property damage in any one occurrence, including, without limitation, cracking or breakage of plate glass. Such insurance shall cover all risks arising directly or indirectly out of Lessee's activities or any condition of the leased premises whether or not related to an occurrence caused or contributed to by Lessor's negligence, 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 certificates evidencing such insurance shall bear endorsements requiring thirty (30) days written notice to Lessor prior to any change or cancellation.
- B. Coverage of all Lessee's employees is required under the provisions of the Worker's Compensation Law. Lessee shall supply Lessor, at Lessor's request, with satisfactory evidence of public coverage or the certificates of private coverage in the same form as required above for Lessee's general liability insurance.

## 16. DAMAGE OR DESTRUCTION

In the event of the damage or destruction of said leased premises or of the building of which they are a part, by fire, or by fire and water or other casualty to the extent of 50% or more of the sound value thereof prior to the casualty, the Lessor may elect either to reconstruct or not to reconstruct the same. If the election be not to reconstruct the said premises, then this lease shall terminate as of the date of said casualty. If, however, the repair so occasioned shall not amount to said percent of the said value there prior to the casualty, then the Lessor shall repair said premises with all convenient speed. In either event, if the Lessor shall reconstruct or repair the premises or the portion thereof damaged by casualty, it shall have the right to take possession of and occupy, to the exclusion of the Lessee, all of the premises or any part thereof, for the purpose of such reconstruction or repair; and the Lessee hereby agrees to vacate, upon request, all or any part of said premises which the Lessor may reasonably require for said purposes; and for the period of time between the date of such casualty and until said work shall have been completed, there shall be such an abatement of rent as the nature of the injury or damage, and its interference with the occupancy of the premises by the Lessee, shall warrant. But if said premises shall be but slightly injured and the damage so occasioned shall not cause any material interference for the occupancy of the premises by the Lessee, then there shall be no abatement of rent and the Lessor shall repair said premises with all convenient speed.



**17. WAIVER OF SUBROGATION**

Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, including sprinkler leakage insurance, if any, if such insurance was obtainable at the time of such loss or damage. All claims or rights of recovery for any and all such loss or damage, however caused, are hereby waived. Without limiting the generality of the foregoing, said absence of liability shall exist whether or not such loss or damage is caused by the negligence of either Lessor or Lessee or by any of their respective agents, servants, or employees.

**18. LIENS**

Lessee shall pay as due all claims for work done for services rendered or material furnished to the premises at its request and shall keep the premises free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect all costs of such 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 days (10) 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, attorney's fees or other charges that could accrue as a result of any foreclosure sale or sale under the lien.

**19. ASSIGNMENT AND SUBLETTING**

A. Lessee shall not assign this lease or any interest therein and shall not sublet the leased premises or any part thereof, or any right or privilege pertinent thereto, or permit any other person (the agents and servants of Lessee excepted) to occupy or use the leased premises or any portion thereof, without first obtaining the written consent of Lessor. Consent by Lessor to one assignment, subletting, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to an assignment shall not release the original named Lessee from liability for the continued performance of the terms and provisions on the part of the Lessee to be kept and performed, unless Lessor specifically and in writing releases the original named Lessee from said liability. Any assignment or subletting without the prior written consent of Lessor shall be void and shall, at the option of the Lessor, terminate this lease. This lease shall not, nor shall any interest therein, 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 or to subletting provided the subrental rate or effective rental paid by the assignee is not less than the current scheduled rental rate of the Building for comparable space and the proposed Lessee is compatible with Lessor's normal standards for the Building. If Lessee proposes a subletting or assignment to

which Lessor is required to consent under this paragraph, Lessor shall have the option of terminating this lease and dealing directly with the proposed subtenant, or assignee, or any third party. If an assignment or subletting 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 or subletting, including reasonable attorneys' fees.

B. Lessor hereby consents to an assignment by Lessee to an unnamed corporation of which Lessee will be the major stockholder, provided Lessee executes a Personal Guaranty guarantying the payment of the rental and the strict performance of all covenants, agreements, terms and conditions of the lease.

## 20. DEFAULT

The following shall be events of default:

- A. Failure of Lessee to pay any rental or other charge required hereunder 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 rental 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 remedy as soon as practical.
- C. The abandonment of the premises by the Lessee or the failure of Lessee for fifteen (15) days or more to occupy the property for one or more of the designated purposes of this lease unless such failure is excused under other provisions of this lease.
- D. The bankruptcy or insolvency of the Lessee or if a receiver or trustee be appointed to take charge of any of the assets of Lessee, sub-lessees or assignees in or on the leased premises and such receiver or trustee is not removed within thirty (30) days after the date of his appointment, or in the event of judicial sale of the personal property in or on the leased premises upon judgment against Lessee or any sub-lessee or assignee thereunder.

## 21. REMEDIES ON DEFAULT

In the event of a default, Lessor may elect to terminate Lessee's right to possession of the leased premises by notice to Lessee. Following such notice, Lessor may re-enter, take possession of the leased premises and remove any persons or property by legal action or self-help and within the rights provided by statute. 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 Lessor under this lease. Perfection of such security interest shall be by taking possession of the property or otherwise as provided by law.

- A. 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, refurnish, 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 of 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.
- B. Following re-entry, Lessor shall have the right to recover from Lessee the following damages:
  - (1) All unpaid rent or other charges for the period prior to re-entry, plus late charges as provided in Paragraph 23;
  - (2) An amount equal to the rental 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. If Lessor lists the premises with a real estate broker experienced in leasing commercial properties in the area of the premises, this shall constitute the taking of reasonable efforts to re-let the premises;
  - (3) All costs incurred in 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 the Lessor's expense to meet Lessee's special requirements;
  - (4) The difference between the rent reserved under this lease and the amount actually received by Lessor upon any re-letting;
  - (5) Reasonable attorney's fees incurred in connection with the default, whether or not any litigation has commenced.
- C. 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. To multiplicity of actions, Lessor may obtain a decree of specific performance requiring Lessee to pay the damages stated in Paragraph 21(B) 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.

- D. In the event that Lessee remains in possession following default and Lessor does not elect to re-enter, Lessor may recover all unpaid rent or other charges, and shall have the right to cure any non-monetary default and recover the cost of such cure from Lessee, plus late charges as provided in Paragraph 23. In addition, Lessor shall be entitled to recover attorney's 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.
- E. The foregoing remedy 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.

## 22. SURRENDER UPON TERMINATION

Upon expiration of the lease term or earlier termination because of default, Lessee shall deliver all keys to Lessor and shall surrender the premises to Lessor in first-class condition and broom clean. Alterations constructed by Lessee pursuant to Lessee's permission shall not be removed or restored to the original condition unless the terms of permission for the alterations so require. Depreciation and wear from ordinary use for the purposes for which the premises were let need not be restored, but all repair for which Lessee is responsible shall be completed prior to such surrender. Lessee's obligation under this paragraph shall not apply in case of termination of this lease because of destruction of the premises.

- A. With the exception of Lessee's movable trade fixtures, all other fixtures placed upon the premises during the term shall, at Lessor's option, become the property of Lessor. Lessor may elect to require Lessee to remove all such fixtures which would otherwise remain the property of Lessor, and to repair any damage resulting avoid a from the removal. Should the Lessee fail to effect such removals or make such repairs, Lessor may do so and charge the cost to Lessee together with late charges as provided in Paragraph 23 from the date of the expenditure.
- B. Lessee shall remove all furnishings, furniture and trade fixtures that remain the property of Lessee. Failure to do so shall be an abandonment of the property and Lessee shall have no further rights therein except as provided below. Lessor may elect to proceed as follows with respect to such abandoned property:

- (1) Retain or dispose of the property as it sees fit.

(2) Following twenty days (20) written notice to Lessee, remove the property and place it in public storage for Lessee's account, in which Lessee shall be liable for the cost of removal, transportation and storage, plus interest as provided in Paragraph 23 from the date of all expenditures.

C. Should Lessee fail to vacate the premises when required, Lessor's rights shall be as follows:

(1) Lessor may elect to treat Lessee as a Lessee from month to month subject to all the provisions of this lease except that the rent shall be triple the total rent being charged when the lease term expired;

(2) Lessor may elect to take legal action to eject Lessee from the premises and to collect any damages caused by Lessee's wrongful holding over.

D. Lessee's failure to remove property as required by Paragraph 22(B) shall constitute a failure to vacate to which Paragraph 22(C) shall apply if the property not removed will substantially interfere with occupancy of the premises by another Lessee or with occupancy by Lessor for any purpose including preparation for a new Lessee.

### 23. LATE CHARGE

In addition to all of the remedies provided herein, if any rental or other charge required hereunder is not received by Lessor within ten (10) days after it is due, the Lessor may impose a late charge equal to five (5%) percent of the amount of the delinquent rental or other charge for each month in which such rental or other charge is delinquent. Lessee shall pay any such late charges immediately upon being billed therefore by Lessor. The imposition by Lessor and/or the payment by Lessee of any such late charges shall not waive or cure Lessee's default hereunder. Failure to impose a late charge on one occasion does not effect a waiver of Lessor's rights to impose a due late charge on a subsequent delinquent payment.

### 24. NOTICES

Any notices required or permitted by law of this lease to be given to either party hereto shall be sufficiently given if sent by United States certified 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:

To Lessor: CITY OF PORTLAND  
Office of General Services  
1120 SW 5th Ave - Rm 1204  
Portland OR 97204

To Lessee: STRINGHAM & SMITH  
317 SW Morrison  
Portland OR 97204

**25. EMINENT DOMAIN**

If all or a portion of the leased premises, or the building known and described herein 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 rental. 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 and alterations to restore the premises to a condition reasonably 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 as an economic unit on account of the taking. Rent shall be abated to the extent that the premises are untenable 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 leased premises is taken.

**26. TIME OF THE ESSENCE**

Time is of the essence of this lease.

**27. NONWAIVER**

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.

**28. MODIFICATIONS**

This lease shall not be amended or modified except by agreement in writing, and signed by the parties hereto.

**29. ATTORNEY'S FEES**

In the event that suit or action is instituted by Lessor or Lessee to enforce compliance with any of the terms, covenants and conditions of this lease on the part of the other to be kept and performed, the prevailing party shall recover in addition to the costs and disbursements provided by statute, such sums as the Court may judge reasonable as attorneys fees. In the event of appeal, such further sum as may be fixed with the Appellate Court on appeal of such suit or action.

### 30. ASSIGNABILITY

All rights, remedies and liabilities herein given to or imposed upon either of the parties hereto shall extend to the heirs, executors, administrators, successors and interests, representatives and (so far as this lease and the term hereby created are assignable hereunder) to the assigns of such parties.

### 31. GRAMMATICAL CHANGES

Wheresoever the word lessor or lessee is 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 in each instance as meaning he or his, he or her, they or their, it or its, as the context and the sense and general purport of this instrument may require.

### 32. FOR RENT SIGNS

During the period of ninety (90) days prior to the date for the termination of this lease, or upon default, Lessor may post on the leased premises or the size notifying the public that the premises are "for rent" or "for lease".

### 33. SQUARE FOOTAGE

Lessee has verified the approximate square footage of the leased premises. The minimum monthly rental set forth in Paragraph 2.A. and the agreed percentage for the Lessee's share of Common Area Charges and Real Estate Taxes set forth in Paragraph 6 and 7 respectively shall not be adjusted by reason of any claimed variation in square footage by either party.

### 34. NONSTANDARD TENANT IMPROVEMENTS

All work performed by the Lessee on the demised premises shall be done in strict compliance with all applicable building, fire, sanitary and safety codes, and other applicable laws, statutes, regulations and ordinances, and Lessee shall secure all necessary permits for the same. To the extent required by law, Lessee shall apply for permits and submit permit plans to the City of Portland Bureau of Buildings within ten (10) days of obtaining Lessor's consent to Lessee's plans and specifications. Lessee shall keep the premises free from all liens in connection with any such work. All work performed by the Lessee shall be carried forward expeditiously, shall not interfere with Lessor's work or the work to be performed by or for other tenants, and shall be completed within a reasonable time. All such work shall be completed in a good and workmanlike manner. Lessor or Lessor's agents shall have the right at all reasonable times to inspect the quality and progress of such work. All improvements, alterations and other work performed on the premises by Lessee (or by Lessor) shall be the property of Lessor when installed, except for Lessee's trade fixtures, and may not be removed at the expiration of this lease unless the applicable Lessor's consent specifically provides otherwise. Notwithstanding Lessor's consent to

improvements or alterations by Lessee, all such improvements, alterations and other work to be performed by Lessee shall be at the sole cost and expense of Lessee. Lessee agrees to provide Lessor with an "as built" sepia of the lease space and the improvements therein at completion of Lessee's construction.

### 35. PERFORMANCE BY LESSOR

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 the same shall be due to any labor dispute, strike, lockout, civil commotion or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, or through 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.

### 36. BUILDING ALTERATIONS AND REPAIRS

In the event the 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 or building, then such repairing, alteration, removal, reconstruction or improvement may be made by and at the expense of the Lessor without any interference or claim for damages by the Lessee, but there shall be such an abatement or adjustment of rent as shall be just in proportion to the interference with Lessee's occupation of the premises; and that the 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 maintaining the premises and making such alterations and repairs and doing such other things thereto and to the equipment of the building, as may become necessary or advisable, without any interference or claim for damages by the Lessee.

### 37. ESTOPPEL CERTIFICATES

Lessee shall, from time to time, upon written request of Lessor, execute, acknowledge and deliver to Lessor or its designatee a written statement stating: the date this lease was executed, the date the term commenced and the date it expires; the date Lessee entered into occupancy of the premises; the amount of monthly rent and the date to which such rent has been paid; and certifying: that this lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or specifying the date and terms of agreement so affecting this lease); that this lease represents the entire agreement between the parties as to this leasing; that all conditions under this lease to be performed by the Lessor have been satisfied; that all required contributions by Lessor to Lessee on account of Lessee's improvements have been received; that on this date there are no existing defenses or offsets which the Lessee has against the enforcement of this lease by the Lessor; that no rent has been paid more than one month in advance; and that no security has been deposited with Lessor except as expressly set forth herein. It is intended that



any such statement delivered pursuant to this paragraph may be relied upon by a prospective purchaser of Lessor's interest or a mortgagee of Lessor's interest or assignee of any mortgage upon Lessor's interest in the building.

### 38. EXHIBITS AND ADDITIONAL PROVISIONS

Exhibit A which is referred to in this lease are attached hereto and by this reference incorporated herein.

### 39. TRADE FIXTURES, DEFAULT

In the event of a default by Lessee, Lessor's remedies are set forth in Paragraphs 21 and 22. Without limiting the provisions of Paragraphs 21 and 22, Lessor's remedies shall include the removal of Lessee's trade fixtures (as defined under Oregon law) equipment, furnishings and furniture from the Premises and store the same for the account of Lessee. In such event, the damages recoverable by Lessor from Lessee shall be expanded to include the cost of removal of the foregoing items, repair and restoration of the Premises, transportation to storage, and storage charges, with interest on all such expenses from the date of expenditure by Lessor until repaid as provided in Paragraph 23 of the Lease, together with the other items of damage set forth in Paragraph 21. Upon payment of all such damages, Lessor will release such trade fixtures, equipment furnishings and furniture to Lessee. Provided, however, and without limiting the default provisions of this lease, Lessor will not remove the foregoing items from the Premises to storage until a period of sixty (60) date of default. From and after said sixty (60) day period, Lessee waives all rights or claims against Lessor as to the failure or difficulty of mitigation of damages by reason of removal of the foregoing items from the Premises. In other words, Lessee may not then assert that the Premises cannot be leased to a third party because of the removal of such items.

### 40. OPTION TO RENEW

Lessee is hereby given one (1) three-(3)-year option to renew this Lease commencing upon the expiration of the original term herein granted, provided the Lessee is not then in default hereunder. Should Lessee elect to renew the term of this Lease, it shall give to Lessor its written notice of such election by not later than six (6) months prior to the expiration of the original term; the giving of such notice shall itself constitute the renewal of this Lease upon the terms and conditions herein provided, except the rent to be paid during the renewal term shall be at the market rate for comparable lease sites.

In the event the parties cannot agree on the rental, percentage rental to be paid for said term, then and only in such event Lessor and Lessee shall each select an arbitrator to determine the reasonable value of such charges to be paid for said term. In the event said arbitrators so appointed are unable to agree on a reasonable value, they shall select and designate one additional arbitrator and then agreement of any two arbitrators shall be binding upon the parties and enforceable in a court of law of the State of Oregon. It is further agreed that in the event any arbitrator should become unable or unwilling for any reason to serve, a substitute shall be appointed by the person originally

selecting him. In the event the two arbitrators first appointed should be unable to agree on a third arbitrator, such arbitrator shall be appointed by the presiding judge of the Circuit Court for the County of Multnomah, State of Oregon. Arbitration costs to be borne by both parties.

#### 41. NON-COMPETE

Lessor shall not rent any other part of the said building of which the leased premises are a part to be used as a retail, wholesale, or mail order bakery or permit the carrying on of the bakery business in any part of the said building. This lease shall not, however, be construed to prevent the sale of baked goods of any description whatsoever in other parts of the said building.

#### 42. COMPLETE AGREEMENT

There are no oral agreements between Lessor and Lessee affecting this lease, and this lease supersedes and cancels any and all previous negotiations, arrangements, brochures, advertising, agreements and understandings, oral or written, if any, between Lessor and Lessee or displayed by Lessor or its agents to Lessee with respect to the subject matter of this lease or the building. There are no representations between Lessor and Lessee or between any real estate broker and Lessee other than those contained in this lease and all reliance with respect to any representations is solely upon representations contained in this lease.

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

CITY OF PORTLAND, LESSOR

STRINGHAM & SMITH COMPANY, *UM*  
LESSEE *JS*

By: \_\_\_\_\_  
Commissioner of Public Works

x *Victoria S Marhart*  
Victoria S Marhart, an individual

\_\_\_\_\_  
City Auditor

x *Charlotte Ann Smith*  
Charlotte A Smith, an individual

MORRISON PARK EAST RULES AND REGULATIONSIN CASE OF EMERGENCY

DURING WORKING HOURS, MON. TO FRI.-call 248-4380

WEEKENDS AND AFTER WORKING HOURS, use this procedure:

Call Police Central Precinct, 248-5733, and state:

- Your name
- Your location and telephone number
- Type of emergency
- Location of emergency
- Nature of immediate needs

If Facilities Management is needed ask officer on duty to call whoever is "on call". Central Precinct has a current "on call" roster.

COMMON AREAS

- Authorized persons only are allowed in the common area corridor.
- Customers shall use the restrooms in the store area only; the common area restroom is for employee use.
- Doors to the common area shall remain closed at all times. Use door props for loading, etc., and close immediately after use, for security purposes.
- Common areas shall be kept free of boxes and debris and shall not be used for storage.
- Bicycles shall be stored in the rack provided and not in the corridor.
- Motorcycles shall be stored in the parking garage-not in the corridor.

MAINTENANCE

- Label all electric circuit breakers in your leased areas.
- Tenants shall maintain all systems and space in leased areas as well as storefront.

THERMOSTATS

- Each tenant thermostat has, on the bottom right hand side, a lever which can be set to heat-off-auto.
- The heat setting is for heat only.
- Off means just that--off; no heat, no air conditioning.
- Auto means that the air conditioner only will come off and on as needed.

TRASH

- Boxes shall be broken down, flattened, stacked, and tied and placed only in the container so designated.
- All odorous materials shall be placed in tightly sealed, heavy plastic bags in trash containers.
- The trash room door shall be closed after use.

SIGNS

- All signs must be in accordance with Morrison Park East sign standards and guidelines and shall be approved by the City before installation.
- Prior written approval of the City shall be obtained before any change or addition to exterior signs.
- No sign directing unauthorized persons to the common area will be permitted.
- All posted signs in the common area shall be observed.
- Paper signs and/or stickers as well as all signs of a temporary character or purpose, regardless of the composition of the sign or material used therefor, will not be permitted.

EXTRA CHARGES

Charges may be assessed for:

- Clean-up or repair in common area, directly caused by tenant abuse.
- Removal of boxes which have not been broken down and flattened.
- Debris not placed in garbage containers.
- Removal of unsealed, wet garbage in trash container.
- After-regular-business-hours use of the building, involving use of common area, central systems, or elevators.
- Entry doors left open--which required additional cooling. Doors shall be kept closed during warm outside temperatures.

LOCKS AND KEYS

- Tenant shall be responsible for all lock and keys to his individual shop.

## MORRISON PARK EAST SIGN STANDARDS

Tenant Identification Signing:

A sign band is provided for such graphics as are necessary to identify the tenant name and type of business. This band provides potential signing surfaces along the center horizontal mullion of windows of each tenant space; and where awnings are provided, this band extends to the inside and outside surfaces of the awning valance and side panels.

As an alternative or supplement to standard tenant identification above, permanent graphic treatment applied to window surfaces or intended to be viewed through shop windows is encouraged and may be permitted. It is the intent of this provision to encourage and permit major quality graphic treatments which intensify the vitality and quality of the shopping image and the environment of sidewalk areas surrounding each structure.

Design guidelines and a variety of potential treatments have been prepared and are available for review by those interested in carrying out window graphics.

Sign Criteria

These criteria have been established for the mutual benefit of all the tenants. Conformance herewith will be strictly enforced and any nonconforming or unapproved signs that are installed must be removed by the tenant within ten (10) days after notice of nonconformance or appropriate action will be taken by Lessor.

The Project Architect or Sign Administrator is to administer and interpret these criteria, but is not empowered to authorize any departure.

A. General Requirements

1. Each tenant shall submit to the sign administrator for approval before fabrication at least two copies of detailed drawings covering the location, relationship to adjacent building areas, size, layout, design, color, materials, and illumination method and intensity.
2. All permits for signs and their installation shall be obtained by the tenant or his representative.
3. Tenant shall be responsible for the fulfillment of all requirements, specifications, and current City sign codes.

## MPE Sign Standards

B. General Specifications

1. Metal boxes with plastic faces will not be permitted on sign band.
2. Flashing, blinking, moving, animated or audible signs will not be permitted.
3. Pylon or pole signs will not be permitted, except for project parking entrance signs.
4. All electrical signs shall bear the UL label, placed out of sight, and their installation must comply with all local building and electrical codes.
5. No exposed conduit, fluorescent tubing, lamps, ballast boxes or raceways will be permitted.
6. All cabinets, conductors, transformers and other equipment shall be concealed.
7. Electrical service to all signs shall be on tenant's meters.
8. Fluorescent day glo black light colors shall not be permitted.
9. Sign manufacturer's label is not permitted on exposed surfaces of the sign except those legally required, in which case they shall be placed in an inconspicuous place.

C. Construction Requirements

1. All exterior signs, bolts, fastenings and clips shall be of hot dipped galvanized iron, stainless steel, aluminum, brass or bronze, and no black iron materials of any type will be permitted.
2. All exterior letters or signs exposed to the weather shall be mounted so as to permit proper dirt and water drainage.
3. Location of all openings for conduit and sleeves in building walls shall be indicated on detailed drawings submitted to the sign administrator by tenant. Tenant shall install signs in accordance with the approved drawings.
4. No labels will be permitted on the exposed surface of signs, except those required by local ordinance which shall be applied in an inconspicuous location.

## MPE Sign Standards

5. All penetrations of the building structure required for sign installation shall be neatly sealed in a watertight condition.
6. Tenant shall repair any damage to any work caused by work in installing his signs.
7. Tenant shall be fully responsible for the operations of any persons constructing, installing, or repairing tenant's signs.

D. Design Requirements

1. All Tenant storefront entrance and store identification designs shall be subject to the approval of the sign administrator. Imaginative designs which depart from traditional methods and placement will be encouraged, but subject to the approval of the Lessor to the extent of any departure from this Sign Criteria.
2. No signs shall be permitted on the exterior of the structure.
3. Tenants shall have identification signs designed as an integral part of the storefront in a manner compatible with and complimentary to adjacent and facing storefronts and the overall design concept. Letter size and location shall be within the physical limits of the storefront and appropriately scaled and proportioned to the overall storefront design, and no such sign shall project beyond 6 inches from face of storefront or awning.
4. No signs perpendicular to the face of the building or storefront will be permitted.
5. No signs of any sort shall be permitted on awning roofs or building roofs.
6. Wording of signs shall be limited to identification and shall not include any specification of the merchandise offered for sale therein or the services rendered therein, except as part of tenant trade name or insignia, crest or corporate shield.
7. No sign shall exceed a maximum brightness of 100 foot lamberts.

E. Miscellaneous requirements

## MPE Sign Standards

1. Each tenant will be permitted to place upon each entrance of its premises not more than one hundred forty-four (144) square inches of gold leaf or decal application lettering not to exceed two inches (2") in height, indicating hours of business, emergency telephone numbers and like information.
2. Each tenant has a non-customer door for receiving merchandise and may have uniformly applied on said door, in a location as directed by the sign administrator, in two inch (2") high block letters, the tenant's name and store number. Where more than one tenant uses the same door, each name and store number shall be applied. Color of letters will be selected by the sign administrator.
3. Tenant may install, if required by the U.S. Post Office, the numbers only for the street address in exact location stipulated by the sign administrator. Size, type, and color of numbers shall be as stipulated by the sign administrator.
4. Floor signs, such as inserts into terrazzo, shall be permitted within the tenant's premises (or lease line), if approved by the sign administrator.
5. Paper signs and/or stickers utilized as signs, credit card decals, as well as all signs of a temporary character or purpose, irrespective of the composition of the sign or material used therefor, will not be permitted.
6. All signs including illumination and supporting structures shall be properly maintained by the Lessee and shall be removed if in the Lessor's judgment adequate maintenance is not being provided.

F. Administration and Miscellaneous

In the event any conflict or interpretation between any tenant and the sign administrator as to the application of these criteria cannot be satisfactorily resolved, the sign administrator shall submit the design to the Lessor. The decision of said Lessor shall be final and binding upon the tenant.

2/23/83



**ORDINANCE No. 158716**

An Ordinance authorizing a lease agreement between the City of Portland, Lessor, and Victoria Marihart and Charlotte Smith, Lessee, for retail space located in the Morrison Park East parking structure and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. The Morrison Park East parking structure has 858 sq ft of vacant retail space.
2. Victoria Marihart and Charlotte Smith dba Stringham & Smith Company desire to lease the retail space for a period commencing July 1, 1986 and expiring May 31, 1989.
3. The lease agreement has been approved as to form by the City Attorney.

NOW, THEREFORE, the Council Directs:

- a. The Commissioner of Public Works and the City Auditor are authorized to execute a lease agreement between the City of Portland, Lessor, and Victoria Marihart and Charlotte Smith, Lessee, similar in form to Exhibit A, attached hereto and made a part hereof by reference herein.

SECTION 2. The Council declares that an emergency exists since failure to execute the lease in a timely manner may result in a loss of revenue to the City of Portland; therefore, this Ordinance shall be in force and effect from and after its passage by Council.

Passed by the Council, JUL 10 1986

Commissioner Bogle  
Bradley Fudge/t  
June 24, 1986

**Jewel Lansing**  
Auditor of the City of Portland  
By *Doris E. O'Leary*  
Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
BOGLE	<u>      </u>	<u>      </u>
LINDBERG	✓	
SCHWAB	✓	
STRACHAN	✓	
CLARK	✓	

FOUR-FIFTHS CALENDAR	
BOGLE	
LINDBERG	
SCHWAB	
STRACHAN	
CLARK	

Calendar No.

ORDINANCE No. ~~1334~~ 158716

## Title

An Ordinance authorizing a lease agreement between the City of Portland, Lessor, and Victoria Marihart & Charlotte Smith, Lessee, for retail space located in the Morrison Park East parking structure and declaring an emergency.

JUL 2 1986  
CONTINUED TO 9:30 A. M. JUL 10 1986

Filed JUN 27 1986

JEWEL LANSING  
Auditor of the CITY OF PORTLAND

By Edna Cervera  
Deputy

INTRODUCED BY

Commissioner Bogle

NOTED BY THE COMMISSIONER

Affairs

Finance and  
Administration

Safety

Utilities

Works

*Dick Bogle/kub*

BUREAU APPROVAL

Bureau:

General Services

Prepared By:

Date:

Bradley P. Fudge

6-24-86

Budget Impact Review:

☒ Completed

☐ Not required

Bureau Head:

David L. Rabiner

CALENDAR

Consent

X

Regular

NOTED BY

City Attorney

City Auditor

City Engineer