

AIR-RIGHTS LEASE

THIS LEASE made and entered into this _____ day of _____, 1989, by and between SI-LLOYD ASSOCIATES LIMITED PARTNERSHIP, an Indiana limited partnership (hereinafter referred to as the "Lessee"), and the CITY OF PORTLAND, a municipal corporation of the State of Oregon (hereinafter referred to as the "City" or the "Lessor" as the context may require),

R E C I T A L S:

A. Lessee owns the following property:

Blocks 136, 137, 202 and 203, HOLLADAYS ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah, and State of Oregon (hereinafter referred to as "the Blocks")

pursuant to a Sale Agreement dated December 3, 1986.

B. The Blocks are connected by an existing skybridge ("Skystructure"). The Skystructure was constructed as part of the Lloyd Center project to provide access to the Lloyd Center properties from each side of N.E. Halsey Street. The Skystructure is located above portions of the City's public right of way and street known as N.E. Halsey at its intersection with vacated N.E. 12th Avenue ("Street Property").

C. The Lloyd Corporation had been granted a revocable permit by the City to construct, use and maintain the Skystructure as part of the Lloyd Center project; upon acquisition of the

Lloyd Center, Lessee requested permission of the City to continue to use and maintain the Skystructure.

D. The City, by Ordinance No. 159189, passed on November 26, 1986, granted Lessee permission to continue to use and maintain the Skystructure over and across the Street Property on the following conditions:

1. Lessee agreed to provide insurance with limits of coverage that would meet the maximum requirements for liability of a public body as set forth in ORS 30.270, and Lessee has provided a certificate evidencing that the insurance requirements have been met; and

2. Lessee agreed to enter into an air-rights lease with the City with a rental rate, duration, termination and other provisions as provided herein.

E. Use and maintenance of the Skystructure is in the public interest. The Skystructure preceded the adoption of the City's "City-Wide Policy: Encroachments in the Public Right-of-Way." The Skystructure will not unreasonably interfere with the public use and utility use of the Street Property.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and the performance thereof, the parties hereto agree as follows:

1. Lease. Lessor does hereby lease, demise, and let unto Lessee Lessor's ownership interest and rights of way in the air-rights space more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Air-Rights Space").

2. Rent and Administrative Fee. The rental rate for the Air-Rights Space is \$1.00 per year commencing November 26, 1986. In addition, Lessee shall pay to Lessor administrative fees in the amount of \$2,000.00 per year commencing November 26, 1986, which fees compensate Lessor for lease maintenance, inspection, record keeping and mapping, public information, and legal services attributable to the Skystructure.

3. Term and Renewal.

3.1 Definition of Term. When used in this Lease, "term" shall mean the initial term of this Lease or the initial term of this Lease as renewed pursuant to Paragraph 3.3.

3.2 Term. The initial term of this Lease shall commence on November 26, 1986, ("Date of Commencement") and shall extend until November 26, 2053, unless earlier terminated as provided herein.

3.3 Renewal. Lessee shall have the options to renew this Lease for two consecutive terms of 11 years each and one additional term of ten years on the same terms and conditions as contained herein, provided that, as of the date of the commencement of each successive term, there shall be no default

under the terms of this Lease and the Air-Rights Space shall be used for the same or substantially similar purposes as the Air-Rights Space is used during the first 67 years of this Lease. In order to exercise each renewal option, Lessee shall give written notice to Lessor of its intent to renew not less than one year nor more than five years prior to the last day of the expiring term.

4. Use. Lessee may occupy and use the Air-Rights Space for the purpose of using and maintaining the Skystructure and any replacement facilities to provide vehicular and pedestrian access to the improvements constructed on the Blocks. Such Air-Rights Space may not be used for other purposes without prior City Council approval under the Encroachment Policy.

5. Acknowledgments and Covenants of Lessor. Lessor hereby acknowledges and covenants that:

5.1 Lessee shall at all times during the Lease term, and renewal terms if exercised, peaceably and quietly enjoy the Air-Rights Space without any disturbance from Lessor, except only such disturbance as shall be required for maintenance and repair of public facilities in the right-of-way. City or any Bureau thereof shall, however, have the right of reasonable inspection of the Air-Rights Space and the Skystructure or any replacement facilities therein upon reasonable notice to Lessee, to verify the safety of the structure therein and the uses to which the Air-Rights Space is being put.

5.2 In connection with mortgaging the improvements constructed or to be constructed on the Blocks, Lessee shall be permitted to cause one or more mortgages to attach to its leasehold interest under this Lease. For purposes of this Lease: The term "mortgage" shall include a deed of trust, security agreement or other instrument creating an encumbrance upon the leasehold interest, or any part thereof, as security for a loan and a security interest created pursuant to a sale-leaseback financing arrangement, and the term "Mortgagee" shall refer to the holder of any such mortgage or any insured or guaranteed party of any obligation or condition secured by such mortgage.

6. Acknowledgments and Covenants of Lessee. Lessee hereby acknowledges and covenants that:

6.1 Indemnity. Lessee shall indemnify and hold harmless the City and its officers, agents and employees from any and all claims for damages for bodily injury or death or property damage arising out of the existence, maintenance or use of the Skystructure or replacement facilities which may be constructed or installed by Lessee in the Air-Rights Space except to the extent that such claims arise out of the negligence or willful misconduct of Lessor, its officers, agents, or employees.

6.2 Insurance. Lessee shall file with the City Auditor, in a form and with a company to be approved by the City Attorney, a public liability and property damage insurance policy with policy limits of not less than the maximum limits of liability of municipal bodies or their officials set forth in

ORS 30.270, as such statute shall be amended or replaced from time to time. The maximum limits as of January 1, 1989, under such statute are as follows:

6.2.1 \$50,000.00 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence.

6.2.2 \$200,000.00 to any claimant for all other claims arising out of a single accident or occurrence.

6.2.3 \$500,000.00 for any number of claims arising out of a single accident or occurrence.

Lessee will not be required to amend such limits unless Lessor has given Lessee written notice of the changes in such limits. Such insurance shall be for the protection of Lessor, its officers and employees for any claim or claims for personal injury or property damage asserted against Lessor, its officers or employees due to the remodeling, maintenance and use of the Skystructure and replacement facilities constructed in the Air-Rights Space. If Lessee already has a policy of insurance meeting the above provisions as to amount, a certificate of insurance or certified copy of such policy may be furnished, provided that a rider, endorsement, or other provision is supplied making such insurance available to Lessor. Lessee shall maintain such insurance in force and effect during the term of this Lease. Lessee agrees to maintain an endorsement providing that the

policy may not be canceled without 30 days' prior written notice to Lessor. Coverage shall include Lessor and its officers, agents and employees as additional insureds.

7. Maintenance; Taxes and Assessments.

7.1 Maintenance. Lessee agrees to maintain the Skystructure and any replacement facilities that are constructed in the Air-Rights Space at its own expense and shall be responsible for proper control of drainage of such facilities. Lessee agrees to restore, to the approval of the City Engineer, any portion of the right of way outside of the Air-Rights Space which may be disturbed as a result of maintenance of facilities in the Air-Rights Space. Lessee agrees to promptly make repairs to alleviate any immediate hazard known to Lessee. If the City Engineer notifies Lessee that an immediate hazard exists in the right of way, including the Air-Rights Space, due to the construction or existence of Lessee's Skystructure or other facilities in the Air-Rights Space, Lessee shall promptly make all necessary repairs. The City Engineer's notice shall specify the nature of the hazard which must be corrected. If repairs are not made to alleviate the hazard in a responsive manner, then Lessor may cause such repairs to be made and bill Lessee for such cost. Failure to make payment within 90 days of billing shall constitute a breach of this Lease for which Lessee may be declared in default in accordance with Paragraph 8. The amount of such costs, if not paid to Lessor, shall become a lien on the

interest of Lessee, or any successors or assigns of Lessee's interest in this Lease, in the Blocks described as:

Blocks 136, 137, 202 and 203, HOLLADAYS ADDITION
TO EAST PORTLAND, in the City of Portland,
County of Multnomah and State of Oregon.

Such lien shall be subordinate to any then-existing mortgage and leases of all or any portion of the Blocks permitted by this Lease.

7.2 Taxes and Assessments. Lessee agrees to pay when due all taxes and assessments that are or may be levied upon the Skystructure and any replacement facilities that may be constructed in the Air-Rights Space. Failure to pay any taxes or assessments when due shall constitute a breach of this Lease for which Lessee may be declared in default in accordance with Paragraph 8. If Lessee objects in good faith to the validity or amount of any tax or assessment that is or may be levied upon the Skystructure or other facilities in the Air-Rights Space, Lessee, at Lessee's sole expense, may contest the validity or amount of the tax or assessment levied upon such facilities provided that Lessor's interest in the Air-Rights Space is not jeopardized.

8. Default.

8.1 In the event Lessee fails (i) to pay rent as required pursuant to Paragraph 2 hereof, (ii) to maintain insurance as required pursuant to Paragraph 6.2 hereof, (iii) to maintain the facilities constructed in the Air-Rights Space as required pursuant to Paragraph 7 hereof, or (iv) to pay any taxes and assessments levied upon the Air-Rights Space and the

facilities constructed therein as required pursuant to Paragraph 7 hereof, and if any of these failures shall continue for more than 90 days after written notice specifying the nature thereof, Lessee shall be in default hereunder; provided, however, that if such failure be of such a nature as cannot be completely remedied within said 90-day period, no default shall occur so long as Lessee begins correction of the default within the said 90-day period and thereafter proceeds with reasonable diligence and in good faith to remedy the failure as soon as practicable.

8.2 In the event that Lessee shall mortgage its leasehold interest under this Lease, as permitted under Paragraph 5.2 hereof, Lessor shall forward a copy of any notice given pursuant to this Paragraph and Paragraph 9 to each Mortgagee of any such mortgage and each such Mortgagee shall have the same right to remedy as is given to Lessee pursuant to this Paragraph and such additional rights as are set forth in Paragraph 9 hereof. From time to time during the term of this Lease and whenever any change occurs in the status of any Mortgagee, Lessee shall furnish Lessor with a current list of any Mortgagees who would be entitled to notice given pursuant to this Paragraph and Paragraph 9, and such list shall specify the order of priority of their respective liens. Lessor shall be entitled to rely on the most recent list of such additional Mortgagees furnished by Lessee for the names of all such Mortgagees entitled to notice and for the order of priority of their respective liens. Lessor acknowledges that, as of the date hereof, a mortgage is held by

LCM Partners, c/o Heitman Advisory Corporation, Suite 3000,
180 N. LaSalle Street, Chicago, Illinois, 60601.

9. Rights of Mortgagees.

9.1 If a default described in Section 8.1 occurs, Lessor agrees that, within 90 days after notice referred to in Paragraph 8.2 hereof is given by Lessor to a Mortgagee, such Mortgagee shall:

9.1.1 Notify Lessor of its election to proceed with due diligence to foreclose the mortgage or otherwise to proceed promptly to acquire possession of the Air-Rights Space; and

9.1.2 Deliver to Lessor an instrument in writing duly executed and acknowledged wherein the Mortgagee agrees that:

9.1.2.1 During the period that such Mortgagee shall be in possession of the Air-Rights Space and/or during the pendency of any such foreclosure or other proceedings and until the interest of Lessee in this Lease shall terminate, as the case may be, it will pay or cause to be paid to Lessor all sums from time to time becoming due under this Lease for Rent; and

9.1.2.2 If delivery of possession of the Air-Rights Space shall be made to such Mortgagee or successor to or purchaser of Mortgagee's interest, whether voluntarily or pursuant to any

foreclosure or other proceedings or otherwise, such Mortgagee shall, promptly following such delivery of possession, perform or cause such successor to or purchaser of Mortgagee's interest to perform, as the case may be, all the covenants and agreements herein contained on Lessee's part to be performed to the extent that Lessee has failed to perform the same to the date of delivery of possession, as aforesaid, except such covenants and agreements which cannot with the exercise of due diligence be performed by such Mortgagee or such successor to or purchaser of Mortgagee's interest;

then Lessor shall postpone any termination of this Lease and postpone any other action as a consequence of such default for such additional period or periods of time as may be necessary for such Mortgagee, with the exercise of due diligence, to acquire Lessee's interest in this Lease, as aforesaid, and to perform or cause to be performed all of the said covenants and agreements herein contained, as aforesaid. Upon such acquisition of Lessee's interest in this Lease and such performance by such Mortgagee or such successor to or purchaser of Mortgagee's interest, pursuant to any foreclosure proceeding, Lessor's right to declare this Lease terminated or to take any other action based upon the occurrence of any uncured default or the existence of any uncured default which cannot with the exercise of due diligence be remedied by such Mortgagee or successor to or purchaser of

Mortgagee's interest, shall be, and be deemed to be, waived. Nothing herein contained shall be deemed to require a Mortgagee to continue with any foreclosure or other proceedings or, in the event such Mortgagee shall otherwise acquire possession of the Air-Rights Space, to continue such possession, if the default in respect of which Lessor has given notice is remedied. If prior to any sale pursuant to any proceeding brought to foreclose a mortgage, or if prior to the date on which Lessee's interest in this Lease is otherwise extinguishable, the event of default in respect of which the Lessor gives notice is remedied and possession of the Air-Rights Space is restored to Lessee, the obligation of the Mortgagee pursuant to the instrument referred to in this subparagraph shall be null and void and this Lease shall continue in full force and effect.

9.2 In addition to the agreement of Lessor to forbear as set forth in Paragraph 9.1 hereof, and notwithstanding that a Mortgagee may not have acted during such period of forbearance, if, by reason of the occurrence or continuance of an uncured default, this Lease is terminated, Lessor shall immediately notify all Mortgagees of such termination. Any Mortgagee may, within 30 days after such Mortgagee has received a copy of Lessor's written notice of termination of this Lease, request in writing a new lease of the Air-Rights Space from Lessor, and Lessor shall enter into a new lease of the Air-Rights Space with such Mortgagee, or a successor to or a purchaser of such Mortgagee's interest within 20 days after receipt of such request,

which new lease shall be effective as of the date of such termination of this Lease for the remainder of the term of this Lease, at the same rent and upon the same terms, covenants, conditions and agreements as are herein contained; provided that such Mortgagee shall (i) contemporaneously with the delivery of such request pay to Lessor all the installments of rent which Lessee was obligated but failed to pay through the date of such termination (ii) pay to Lessor at the time of the execution and delivery of said new lease any and all sums for rent which would have been due hereunder from the date of termination of this Lease (had this Lease not been terminated) to and including the date of the execution and delivery of said new lease, together with all expenses, including reasonable attorneys' fees, incurred by Lessor in connection with the termination of the Lease and with the execution and delivery of such new lease; and (iii) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, Mortgagee or a successor to or a purchaser of such Mortgagee's interest shall, with due diligence and within a reasonable time, perform or cause to be performed all of the other covenants and agreements herein contained on Lessee's part to be performed to the extent that Lessee shall have failed to perform the same to the date of delivery of such new lease, except such covenants and agreements which cannot with the exercise of due diligence be performed by such holder or such designee and the performance of the covenants by the holder or the successor to or purchaser of

Mortgagee's interest shall be postponed and extended by the time period that the holder or successor to or purchaser of Mortgagee's interest are unable to perform. Such new lease shall have the same relative priority in time and in right as this Lease and shall have the benefit of, and shall vest in such Mortgagee all of the right, title, interest, powers and privileges of the Lessee hereunder in and to the Air-Rights Space, including specifically automatic vesting of the Lessee's right, title and interest in and to the improvements and appurtenances on or above the Air-Rights Space, as well as all furniture, furnishings, appliances, equipment, fixtures and machinery therein, until expiration of the term as the same may be extended.

9.3 If at any time there shall be more than one mortgage constituting a lien on this Lease and the leasehold estate hereby created, and more than one Mortgagee shall request in writing a new lease of the Air-Rights Space, pursuant to Paragraph 9.2, the Mortgagee most junior in lien to all other Mortgagees who have requested a new lease, pursuant to the list of Mortgagees provided pursuant to Paragraph 8.2, shall be vested with the rights (and thereby subject to the requirements) under this Paragraph 9 to the exclusion of any senior Mortgagee; provided, however, that such junior Mortgagee shall take such action as may be necessary to maintain and preserve the liens of all senior Mortgagees in their respective order of priority.

9.4 There shall be no cancellation, termination, surrender, amendment or modification of this Lease by joint action of Lessor and Lessee without the prior written consent of all Mortgagees, and any such cancellation, termination, surrender, amendment or modification shall be null and void and of no effect in the absence of such written consent.

10. Remedies for Default.

10.1 In the event of failure on the part of Lessee described in Paragraph 8.1, which failure has continued for more than 90 days after written notice specifying the nature thereof or, if such failure be of such nature as cannot be completely remedied within said 90-day period, and Lessee has not begun correction of the default or is not diligently pursuing such cure to completion within said 90-day period and subject to the rights of the Mortgagees as set forth in Paragraphs 8 and 9, Lessor may, upon 90 days' written notice, terminate this Lease. During the pendency of any such default hereunder, Lessee shall continue to perform its duties and obligations hereunder, including, without limitation, its obligation to maintain the Skystructure and any replacement facilities constructed in the Air-Rights Space, and, in the event that Lessee or any Mortgagee shall fail to perform such duties and obligations, Lessor may, but shall not be obligated to, perform any or all of such duties or obligations, at Lessee's expense.

10.2 If Lessee or any Mortgagee shall fail to pay insurance premiums when due and Lessor deems it necessary, Lessor may, at any time prior to or after actual default, after ten days' written notice to Lessee and any Mortgagee, purchase insurance coverage with the limits required by Paragraph 6.2 hereof, or any lesser limits determined by the City Engineer in his or her discretion to provide Lessor and its officers, agents, and employees adequate coverage, at Lessee's expense.

11. Surrender. Upon the termination of this Lease (whether by expiration of the term hereof, or by earlier termination as provided in Paragraph 13 or by default), Lessee, at the request of the City Engineer, shall surrender and deliver up possession of the Air-Rights Space. Upon such surrender, Lessee shall remove the Skystructure and any other facilities constructed in the Air-Rights Space. The work shall be done in accordance with plans prepared by Lessee and approved by the City Engineer.

12. Assignment.

Lessee may assign its interest in this Lease as follows:

12.1 Except as provided in Paragraphs 12.2 and 12.3, Lessee shall not assign its interest in this Lease without the written consent of Lessor.

12.2 Notwithstanding anything to the contrary contained in Paragraph 12.1 above,

12.2.1 Lessee may assign its interest in this Lease, without obtaining Lessor's prior written consent, to a transferee simultaneously with a transfer of Lessee's ownership in all of the Blocks described in Paragraph 7.1 to said transferee, provided said transferee executes an instrument whereby the transferee assumes the rights and obligations of Lessee under this Lease from and after the effective date of assignment; and

12.2.2 Lessee may also assign its interest in this Lease, without obtaining Lessor's prior written consent, to a transferee simultaneously with a transfer of Lessee's ownership in one or more (but not all) of the Blocks described in Paragraph 7.1 to said transferee, provided (i) the transferee and the owner of any Block which abuts the skystructure and which is not owned by transferee enter into an easement agreement granting transferee the right to attach the skystructure to such abutting Block for the duration of the Lease term and all optional renewal terms, and (ii) said transferee executes an instrument whereby the transferee assumes all the rights and obligations of Lessee under this Lease from and after the effective date of assignment. Provided, in the case of either such assignment, Lessee sends a notice thereof to Lessor prior to the effective date of the transfer.

12.3 Lessee may assign its interest in this Lease without obtaining Lessor's prior written consent to (i) any Mortgagee contemplated in Paragraph 5.2; (ii) any wholly owned subsidiary of Lessee, or any corporation or other entity controlling, controlled by, or under common control with Lessee, or its partners or Melvin Simon or Herbert Simon; provided that in case of any such assignment, Lessee sends a notice to Lessor prior to the effective date of the transfer, and any such subsidiary, corporation, partners or individuals meet the requirements set forth in paragraphs 12.2.1 or 12.2.2 above. In the event of an assignment to a Mortgagee resulting from a deed in lieu of foreclosure or foreclosure proceedings, Mortgagee may execute the instruments required by paragraphs 12.2.1 or 12.2.2 immediately prior to the time of the foreclosure or transfer in lieu of foreclosure.

12.4 If any assignment is made as described in Paragraphs 12.2 or 12.3 above, Lessor agrees to join in a written instrument relieving Lessee from any further obligations under the Lease from and after the date of such assignment, provided that the transferee agrees to assume all of Lessee's obligations under the Lease from and after the effective date of such assignment.

13. Termination of the Lease for Reasons Other Than Default or Expiration of Term.

13.1 Termination by Lessee. Lessee may terminate this Lease at any time during the term or renewal thereof by providing to Lessor written notice of termination together with

written consent to termination executed by any Mortgagee who is entitled to receive notice pursuant to Paragraph 8.2.

13.2 Termination by Substantial Destruction. This Lease shall terminate 180 days after the date on which the Skystructure is substantially destroyed or is rendered inoperable by reason of destruction of the improvements on the Blocks, unless prior to the expiration of said 180-day period Lessee has given notice to Lessor of its intention to rebuild the Skystructure or the improvements on the Blocks, as the case may be. If Lessee gives said notice to rebuild, Lessee shall commence to rebuild the Skystructure or the improvements, as the case may be, within 180 days from the date of such notice and shall diligently pursue the same unto completion.

14. Modifications for Mortgagees. If any Mortgagee of Lessee's leasehold interest under this Lease shall require any modification(s) of this Lease, Lessor shall, at Lessee's request, promptly execute and deliver to Lessee such instruments effecting such modification(s) as Lessee shall require, provided that such modification(s) do not adversely affect in any material respect any of Lessor's rights under this Lease.

15. Severability. Any provision of this Lease, which shall be held to be invalid, void, voidable, illegal or partially or wholly unenforceable by a court of competent jurisdiction or the fact that any portion or the whole of this Lease shall be held to be invalid, void, voidable, illegal or partially or

wholly unenforceable by a court of competent jurisdiction as to a portion of the Air-Rights Space leased hereunder, shall in no way affect, impair or invalidate any other provision hereof, or any remaining portions of the Air-Rights Space leased hereunder, and (i) the remaining provisions hereof shall nevertheless remain in full force and effect, (ii) the parties shall remain obligated to each other hereunder with respect to performance of such remaining provisions, but (iii) the parties shall be relieved of any obligation to perform and damages for failure to perform, the unenforceable portion(s) of any provision held to be invalid, void, voidable, illegal or partially or wholly unenforceable.

16. Authority. This Lease is executed pursuant to the authority granted by Ordinance No. _____, adopted by the City Council on the ____ of _____, 1989. The City Council, prior to the authorization of this Lease, has determined that continued use of the Air-Rights Space will not unreasonably interfere with public use and utility use of the city streets and sidewalks and has determined that the Air-Rights Space will not be needed for other public purposes for the duration of this Lease. It is understood that this Lease shall not affect the prior dedication or grant of the right of way for street and sidewalk purposes.

17. Notices. All notices required to be given by this Lease shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail, postage prepaid, return receipt requested directed to the following addresses or to such other addresses as the parties

or their assigns may specify by notice to the others from time to time:

Lessor: City of Portland
Auditor's Office
1220 S.W. Fifth Avenue
Portland, Oregon 97204

with copy to: Right of Way Section
Office of Transportation
Room 814
1120 S.W. Fifth Avenue
Portland, Oregon 97204

Lessee: Si-Lloyd Associates Limited Partnership
c/o Larry Troyer
Lloyd Center Management Office
2201 Lloyd Center
Portland, Oregon 97232

with copy to: J. A. Rosenfeld
Melvin Simon & Associates, Inc.
Merchant's Plaza
P. O. Box 7033
Indianapolis, Indiana 46207

18. Headings. Any titles of the several parts and sections of this Lease are inserted for convenience of reference only and shall be disregarded in constructing or interpreting any of its provisions.

19. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

20. Waivers. No waiver made by either party with respect to the performance, or manner or time thereof of any obligation of the other party or any condition of its own obligation under this Lease shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition of its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the party. No waiver by Lessee or Lessor of any provision of this Lease or any breach thereof, shall be of any force and effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

21. Attorneys Fees. In the event of suit to construe or enforce a provision of this Lease the losing party shall pay the prevailing party's reasonable attorney's fees including those incurred in the course of appeal.

22. Choice of Law. This Lease shall be interpreted under the laws of the State of Oregon.

23. Time of Essence. Time is of the essence of this Lease. All obligations of the Lessee and Lessor to each other shall be due at the date specified by this Lease.

24. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and federal legal

holidays, except that if the last day of any period falls on any Saturday, Sunday or such a holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or such a holiday.

25. Construction. In construing this Lease, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter.

26. Entire Agreement. This Lease and the attachments hereto are the entire agreement between the parties. There is no other oral or written agreement between the parties with regard to this subject matter.

27. Modifications. Any modifications to this Lease shall be made in writing executed by both parties.

28. Place of Enforcement. Any action or suit to enforce or construe any provision of this Lease by either party shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon.

29. No Partnership. Neither anything contained in this Lease nor any acts of the parties shall be deemed or construed by the parties, or either of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties

to this Lease, other than the obligations between Lessor and Lessee as described herein.

30. Non-Waiver of Governmental Rights. Subject to the terms and conditions of this Lease, by making this Lease, the City is specifically not obligating itself or any of its agencies with respect to any discretionary action relating to development or operation of the improvements constructed or to be constructed on the Blocks or the Street Property, including, but not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals or permits which are or may be required. The City specifically reserves all of its rights to exercise its police power for the benefit of the public, including, but not limited to, its right to enter and inspect or order the Air-Rights Space vacated for the public health, safety or welfare. This Paragraph grants to City no greater or lesser rights than City has by virtue of its municipality status.

31. Approvals. Whenever in this Lease the approval, consent, satisfaction or action of the City, or any of its Bureaus, is required, such approval, consent, satisfaction or action shall not unreasonably be withheld or delayed.

32. Non-Exclusive Remedies. The rights and remedies expressly afforded under the provisions of this Lease shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity, and the exercise by either

party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party.

Dated this _____ day of _____, 1989.

LESSOR

LESSEE

CITY

SI-LLOYD ASSOCIATES LIMITED
PARTNERSHIP, an Indiana limited
partnership

By: _____
Commissioner of
Public Works

BY: SI-LLOYD DEVELOPERS, INC.,
General Partner

By: _____
City Auditor

By: _____
Title: Melvin Simon, Chairman

APPROVED AS TO FORM:

CITY

By: Linda Hardner
Dep. City Attorney

By: _____
City Engineer

STATE OF INDIANA)

County of Marion)

) ss.
)

On this 25th day of May, 1989, before me personally appeared Melvin Simon, who being duly sworn did say that he is the Chairman of SI-LLOYD DEVELOPERS, INC., an

Indiana corporation, which is the general partner of SI-LLOYD ASSOCIATES LIMITED PARTNERSHIP, an Indiana limited partnership, who executed the foregoing instrument for and on behalf of SI-LLOYD DEVELOPERS, INC., as general partner of and for said SI-LLOYD ASSOCIATES LIMITED PARTNERSHIP, and acknowledged that said instrument is the free act and deed of said partnership.

Michael J. Gabovitch
 Notary Public for Indiana, Michael J. Gabovitch
 My Commission expires: 12-9-91
 My County of Residence: Marion

STATE OF OREGON)
) ss.
 County of Multnomah)

On this ____ day of _____, 19__, before me personally appeared _____, who being duly sworn did say that he is the Commissioner of Public Works of the City of Portland, a municipal corporation of the State of Oregon, and that the foregoing instrument was signed in behalf of said municipal corporation by authority of its Council, and acknowledged that said instrument is the free act and deed of said municipal corporation.

 Notary Public for Oregon
 My Commission expires: _____

STATE OF OREGON)
) ss.
 County of Multnomah)

On this ____ day of _____, 19__, before me personally appeared _____, who being duly sworn did say that he is the City Auditor of the City of Portland, a municipal corporation of the State of Oregon, and that the foregoing instrument was signed in behalf of said municipal corporation by authority of its Council, and acknowledged that said instrument is the free act and deed of said municipal corporation.

 Notary Public for Oregon
 My Commission expires: _____

EXHIBIT A

A 50.0 foot wide air space tract for an existing elevated vehicular bridge across N.E. Halsey Street, the tract being adjacent to Blocks 136 and 203, HOLLADAYS ADDITION TO EAST PORTLAND, said tract being situated in the southwest 1/4 of Section 26 and the northwest 1/4 of Section 35, Township 1 North, Range 1 East of the Willamette Meridian, Multnomah County, Oregon and more particularly described as follows:

Beginning at a point on the east line of said Block 203 at the north line of N.E. Halsey Street as established 40.00 feet from the centerline thereof by Deed recorded in Book 1891, Page 374, Deed Records of Multnomah County, said point being North, 10.00 feet from the southeast corner thereof; thence East along said established north line of N.E. Halsey Street, a distance of 50.00 feet; thence South, a distance of 80.00 feet to the south line of said established N.E. Halsey Street; thence West along said south line, a distance of 50.00 feet to a point on the east line of said Block 136; thence North, a distance of 80.00 feet to the point of beginning.

The above described tract contains 4,000 square feet or 0.0918 acres, more or less.

ORDINANCE NO. 162085

- * Authorize the execution of an Air-Rights Lease with Si-Lloyd Associates Limited Partnership, an Indiana limited partnership, for a skystructure above NE Halsey Street at its intersection with vacated NE 12th Avenue. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City has received a request from Si-Lloyd Associates Limited Partnership, an Indiana limited partnership, to lease space for a skystructure above NE Halsey Street at its intersection with vacated NE 12th Avenue.
2. Ordinance No. 159189, passed by Council November 26, 1986, granted a revocable permit to Si-Lloyd Associates Limited Partnership, an Indiana limited partnership, to use and maintain an existing skybridge over and across NE Halsey Street at vacated NE 12th Avenue; Condition 7 of said Ordinance stated in part that permittees agree to enter into an Air-Rights lease with the City as soon as possible.
3. The City is authorized by ORS 271.430 to lease the space above a public street or highway.
4. The proposed uses of the air-rights space would include using and maintaining the skystructure and any replacement facilities to provide vehicular and pedestrian access to the Lloyd Center.
5. Such uses of the air-rights space will not unreasonably interfere with the public or utility uses of the street.
6. The area covered by the Air-Rights Lease will not be needed for other public purposes during the term of the lease.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Works and Auditor are hereby authorized to enter into the Air-Rights Lease (R/W Lease No. 4220-2) with Si-Lloyd Associates Limited Partnership, an Indiana limited partnership, for lease of the air-rights space above approximately 4,000 square feet of surface area as described in said lease, such lease to be substantially as shown in Exhibit "I," attached hereto and by this reference made a part hereof.

ORDINANCE No.

- b. The Auditor shall return one executed original Air-Rights Lease to:

Si-Lloyd Associates Limited Partnership
% Larry Troyer
Lloyd Center Management Office
2201 Lloyd Center
Portland OR 97232

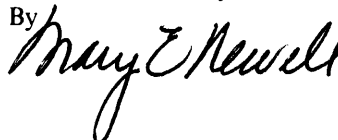
and return one executed copy to the Right-of-Way Acquisition Section, Bureau of Transportation Engineering.

- c. The Auditor is authorized to transmit a certified copy of this Air-Rights Lease and Ordinance to the County Assessor's Office.

Section 2. The Council declares that an emergency exists because a delay in executing the Air-Rights Lease will result in a delay in commencement of the lease; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **JUN 28 1989**

Commissioner Earl Blumenauer
Phyllis I. Redman:KH:mwp.4
June 14, 1989

BARBARA CLARK
Auditor of the City of Portland
By  Deputy

Calendar No. **1093**

ORDINANCE No. 162085

Title

* Authorize the execution of an Air-Rights Lease with Si-Lloyd Associates Limited Partnership, an Indiana limited partnership, for a sky-structure above NE Halsey Street at its intersection with vacated NE 12th Avenue. (Ordinance)

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
BLUMENAUER		
BOGLE		
KOCH		
LINDBERG		
CLARK		

FOUR-FIFTHS CALENDAR	
BLUMENAUER	
BOGLE	
KOCH	
LINDBERG	
CLARK	

Filed *Jean Adams*

BARBARA CLARK
Auditor of the CITY OF PORTLAND

By **JUN 23 1989** Deputy

INTRODUCED BY	
Commissioner Earl Blumenauer	
NOTED BY THE COMMISSIONER	
Affairs	
Finance and Administration	
Safety	
Utilities	
Works <i>Earl Blumenauer</i> <i>bg</i>	
BUREAU APPROVAL	
Bureau: Transportation Engineering	
Prepared By:	Date: <i>PWN</i>
Phyllis Redman:mwp 6-14-89	
Budget Impact Review:	
<input checked="" type="checkbox"/> Completed	<input type="checkbox"/> Not required
Bureau Head:	
Richard O. Schmidt, Chief <i>ROS</i>	
CALENDAR	
Consent <input checked="" type="checkbox"/>	Regular
NOTED BY	
City Attorney	
City Auditor	
City Engineer Approved:	
Richard O. Schmidt, P.E.	
By: <i>B. O. Schmidt</i>	