

RESOLUTION NO. 473

A RESOLUTION REQUESTING APPROVAL OF COMPUTER LEASE
AGREEMENT

WHEREAS, the city staff has prepared a report on the above captioned subject which is attached hereto as Exhibit "A"; and

WHEREAS, the governing body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment described in the Municipal Lease and Option Agreement presented to this meeting; and

WHEREAS, the governing body of Lessee has taken the necessary steps, including any legal bidding requirements, under applicable law to arrange for the acquisition of such equipment.

NOW, THEREFORE, BE IT RESOLVED, by the governing body of Lessee that the terms of said Municipal Lease and Option Agreement are in the best interests of Lessee for the acquisition of such equipment, and the governing body of Lessee designates and confirms the following persons to execute and deliver, and to witness (or attest), respectively, the Security Pacific Capital Markets Group Municipal Lease and Option Agreement and any related documents necessary to the consummation of the transactions contemplated by the Municipal Lease and Option Agreement.

(Name of Party to Execute
Municipal Lease & Option Agreement)

(Title)

(Name of Party to Attest or
Witness Municipal Lease & Option
Agreement)

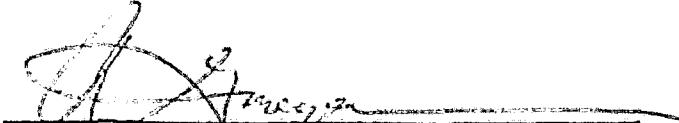
(Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect and further certifies that the above and foregoing Municipal Lease and Option Agreement is the same as presented at said meeting of the governing body of Lessee.

Secretary/Clerk


Date

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 15th day of April, 1985, and filed with the Wilsonville City Recorder this same date.



A. G. Meyer, Mayor

ATTEST:



DEANNA J. THOM, City Recorder

RESOLUTION NO. 473
CB-R-128-85

PAGE 2 OF

CITY OF WILSONVILLE
MEMO

April 15, 1985
DATE

TO: Mayor and City Council
FROM: Ray Shorten, Accounting Director
RE: "Approval of Municipal Lease and Option agreement"

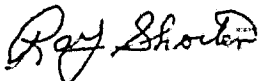
At the time you received your Council packets, all pertinent information had not been received,

Attached please find a copy of the lease agreement and a memo from city legal council.

Recommendation:

Approve Municipal lease and option agreement with Security Pacific Capitol Markets Group and authorize staff to prepare application forms for Mayors signature.

Ray Shorten



Accounting Director

RS:rp

CITY OF WILSONVILLE
MEMO

April 11, 1985

DATE

TO: Mayor and City Council
FROM: Ray Shorten, Accounting Director
RE: "Approval of Computer lease agreement"

The lease purchase agreement on Computer System requires specific action by City Council.

The City Attorney has prepared the necessary forms for this agreement.

Recommendation:

Approve the lease purchase agreement with Security Capital Markets Group, as approved by the City Attorney.

Ray Shorten


Accounting Director

RS:rp

LAW OFFICES OF
MICHAEL E. KOHLHOFF & ASSOCIATES

MICHAEL E. KOHLHOFF

FORUM WEST BUILDING, SUITE I
P. O. BOX 706-9475 S.W. WILSONVILLE ROAD
WILSONVILLE, OREGON 97070
TELEPHONE (503) 682-3955

BETH ELLEN MARKS
JOHN T. GIBBON

MEMO TO : Ray Shorten
FROM : Michael E. Kohlhoff
DATE : April 15, 1985
RE : Municipal Lease and Option Agreement

Dear Ray:

Please be advised I reviewed the copy of the Municipal Lease and Option Agreement submitted by Security Pacific Capital Markets Group. I approve of it as to form. Enclosed is an Exhibit "B", an opinion letter to be attached. Upon the Council's approval of this Agreement, the appropriate City officers should execute same. I will then execute Exhibit "B". I have left the date blank and signature line blank to be filled in on accomplishment of the above.

MEK:ljg

LAW OFFICES OF
MICHAEL E. KOHLHOFF & ASSOCIATES

MICHAEL E. KOHLHOFF

FORUM WEST BUILDING, SUITE I
P. O. Box 706-9475 S.W. WILSONVILLE ROAD
WILSONVILLE, OREGON 97070
TELEPHONE (503) 682-3955

BETH ELLEN MARKS
JOHN T. GIBBON

Agreement No. _____

EXHIBIT B

OPINION OF LESSEE'S COUNSEL

Lessee: City of Wilsonville

Date of Agreement: April ____, 1985

Lessor's Name and Address: Security Pacific Capital Markets
Group, 410 17th Street, Suite 1150, Denver, Colorado 80202

Gentlemen:

As counsel for City of Wilsonville ("Lessee"), I have examined duly executed originals of the Municipal Lease and Option Agreement (the "Agreement") dated April ____, 1985, between Lessee and Security Pacific Capital Markets Group ("Lessor"), and the proceedings taken by Lessee to authorize and execute the Agreement. Based upon the examination and upon such other examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a public body, corporate and politic, legally existing under the laws of the State of Oregon.
2. The Agreement has been duly authorized, executed and delivered by Lessee, pursuant to Constitutional, statutory and/or home rule provision which authorizes this transaction and Resolution No. _____, State of Authorization, attached as Exhibit A to the Agreement.
3. The Agreement is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms. In the event the Lessor obtains a judgment against Lessee in money damages, as a result of an event of default under the Agreement, Lessee will be obligated to pay such judgment.
4. Applicable public bidding requirements have been complied with.
5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or Federal, in any way questioning or affecting the validity of the resolution or the Agreement.

EXHIBIT "B"
OPINION LETTER

6. The signatures of the officers of City of Wilsonville which appear on the Agreement are true and genuine; I know said officers and know them to hold the offices set forth below their names.

7. The Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.

8. The Municipality is a political subdivision within the meaning of Section 103 of the Internal Revenue Code and the related regulations and rulings and that the portion of payments identified as deferred interest charges to maturity, upon receipt, will not be includable in Federal gross income under statutes, regulations, court decisions and rulings existing on the date of this opinion and consequently, will be exempt from present Federal income taxes and income tax of the State of Oregon.

Very truly yours,

Michael E. Kohlhoff
City Attorney

MEK:ljpg

MUNICIPAL LEASE AND OPTION AGREEMENT

Agreement # 664

Lessor: Security Pacific Capital Markets Group
410 17th Street, Suite 1150
Denver, Colorado 80202

Lessee: City of Wilsonville
P. O. Box 220
Wilsonville, Oregon 97070

This Municipal Lease and Option Agreement (the "Agreement") entered into between Security Pacific Capital Markets Group, a division of Security Pacific National Bank, a National banking association ("Lessor"), and City of Wilsonville ("Lessee"), a body corporate and politic duly organized and existing under the laws of the State of Oregon ("State");

WITNESSETH:

WHEREAS, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

COVENANTS OF LESSEE

Lessee represents, covenants and warrants, for the benefit of Lessor and its assigns, as follows:

- (a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.
- (c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby, and to perform all of its obligations hereunder.
- (d) Lessee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolution of its governing body, attached hereto as Exhibit A, or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of this Agreement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder. Lessee shall cause to be executed an opinion of its counsel substantially in the form attached hereto as Exhibit B.
- (e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than the Lessee.
- (f) During the period this Agreement is in force, Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee.
- (g) The Equipment will have a useful life in the hands of the Lessee that is substantially in excess of the Original Term and all Renewal Terms.
- (h) The Equipment is, and during the period this Agreement is in force will remain, personal property and when subjected to use by the Lessee under this Agreement, will not be or become fixtures.

ARTICLE II

DEFINITIONS

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Municipal Lease and Option Agreement, including the Exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Commencement Date" is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which date shall be the date on which the Equipment is accepted by Lessee as indicated on the Certificate of Acceptance attached hereto as Exhibit F.

"Equipment" means the property described in Exhibit D and which is the subject of this Agreement.

"Lease Term" means the Original Term and all Renewal Terms provided for in this Agreement under Section 4.01.

"Lessee" means the entity which is described in the first paragraph of this Agreement and which is leasing the Equipment from Lessor under the provisions of this Agreement.

"Lessor" means (i) Security Pacific Capital Markets Group, acting as Lessor hereunder, (ii) any surviving, resulting or transferee corporation; and (iii) except where the context requires otherwise, any assignee(s) of Lessor.

"Original Term" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

"Purchase Price" means the amount which Lessee may, in its discretion, pay to Lessor in order to purchase the Equipment, as set forth in Exhibit E hereto.

"Renewal Terms" means the automatic renewal terms of this Agreement as provided for in Article IV of this Agreement, each having a duration of one year and a term co-extensive with the Lessee's fiscal year except the last of such automatic renewal terms which shall end on the due date of the last Rental Payment set forth in Exhibit E to this Agreement.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to the provisions of this Agreement during the Lease Term, payable in consideration of the right of Lessee to use the Equipment during the then current portion of the Lease Term. Rental Payments shall be payable by Lessee to the Lessor or its assignee in the amounts and at the times during the Lease Term, as set forth in Exhibit E of this Agreement.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessor purchased or is purchasing the Equipment.

ARTICLE III

LEASE OF EQUIPMENT

Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

**ARTICLE IV
LEASE TERM**

Section 4.01. Commencement of Lease Term. The Original Term of this Agreement shall commence on the Commencement Date as indicated in Exhibit F and shall terminate the last day of Lessee's current fiscal year. The Lease Term will be automatically renewed at the end of the Original Term or any Renewal Term for an additional one year, unless the Lessee gives written notice to Lessor not less than ninety (90) days prior to the end of the Original Term or Renewal Term then in effect, or such greater notice as may be provided in Article VI, of Lessee's intention to terminate this Agreement at the end of the Original Term or the then current Renewal Term pursuant to Article XI or Article VI, as the case may be. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in Exhibit E of this Agreement.

Section 4.02. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

- (a) the expiration of the Original Term or any Renewal Term of this Agreement and the nonrenewal of this Agreement in the event of nonappropriation of funds pursuant to Section 6.06;
- (b) the exercise by Lessee of the option to purchase the Equipment granted under the provisions of Articles IX or XI of this Agreement;
- (c) a default by Lessee and Lessor's election to terminate this Agreement under Article XIII; or
- (d) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder.

**ARTICLE V
ENJOYMENT OF EQUIPMENT**

Lessor hereby covenants to provide Lessee during the Lease Term with quiet use and enjoyment of the Equipment, and Lessee shall during the Lease Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

**ARTICLE VI
RENTAL PAYMENTS**

Section 6.01. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

Section 6.02. Payment of Rental Payments. Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in Exhibit E hereto. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due.

Section 6.03. Interest and Principal Components. A portion of each Lease Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal. Exhibit E hereto sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

Section 6.04. Rental Payments to be Unconditional. The obligations of Lessee to make payment of the Rental Payments required under this Article VI and other sections hereof, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person, Lessee shall make all payments of Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then current Renewal Term shall not be abated through accident or unforeseen circumstances.

Section 6.05. Continuation of Lease Term by Lessee. Lessee intends, subject to the provisions of Section 6.06, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds of an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. Lessee further intends to do all things lawfully within its power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such payments to the extent necessary in each biannual or annual budget submitted and adopted in accordance with applicable provisions of state law, to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved.

Section 6.06. Nonappropriation. In the event sufficient funds shall not be appropriated for the payment of the Rental Payments required to be paid in the next occurring Renewal Term, and if Lessee has no funds legally available for Rental Payments from other sources, then Lessee may terminate this Agreement at the end of the then current Original Term or Renewal Term, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement beyond the then current Original or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least ninety (90) days prior to the end of the then current Original or Renewal Term. If this Agreement is terminated under this Section 6.06, Lessee agrees peaceably to deliver the Equipment to Lessor at the location specified by Lessor. To the extent lawful, Lessee shall not, until the date on which the next occurring Renewal Term would have ended, expend any funds for the purchase or use of equipment similar to the Equipment subject to this Agreement.

**ARTICLE VII
TITLE TO EQUIPMENT; SECURITY INTEREST**

Section 7.01. Title to the Equipment. During the term of this Agreement, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement. In the event of default as set forth in Section 13.02 or nonappropriation as set forth in Section 6.06, title to Equipment, shall immediately vest in Lessor, and Lessee will reasonably surrender possession of the Equipment to Lessor.

Section 7.02. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement, Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions and substitutions thereto, and on any proceeds therefrom. Lessee agrees to execute such additional documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest, and upon assignment, the security interest of any assignee of Lessor, in the Equipment.

**ARTICLE VIII
MAINTENANCE; MODIFICATION; TAXES;
INSURANCE AND OTHER CHARGES**

Section 8.01. Maintenance of Equipment by Lessee. Lessee agrees that at all times during the Lease Term Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for the making of improvements or additions to the Equipment. If requested by Lessor, Lessee will enter into a maintenance contract for the Equipment with Vendor.

Section 8.02. Taxes, Other Governmental Charges and Utility Charges. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay during the Lease Term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, provided that with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the time this Agreement is in effect.

Section 8.03. Provisions Regarding Insurance. At its own expense Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lessor that adequate self-insurance is provided with respect to the Equipment, sufficient to protect the Full Insurable Value (as that term is hereinafter defined) of the Equipment and to protect Lessor from liability in all events. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. Lessee shall furnish to Lessor Certificates evidencing such coverage throughout the Lease Term. Alternatively

Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but other properties. If Lessee shall insure similar properties by self-insurance. Lessee will insure the Equipment by means of an adequate insurance fund.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment.

Any insurance policy pursuant to this Section 8.03 shall be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. The Net Proceeds (as defined in Section 9.01) of the insurance required in this Section 8.03 shall be applied as provided in Article IX hereof. Each insurance policy provided for in this Section 8.03 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lessor without first giving written notice thereof to Lessor at least 10 days in advance of such cancellation.

Section 8.04 **Advances.** In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by Lessor shall become additional rent for the then current Original Term or Renewal Term, which amounts, together with interest thereon, Lessee agrees to pay.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS

Section 9.01. **Damage, Destruction and Condemnation.** Unless Lessee shall have exercised its option to purchase the Equipment by making payment of the Purchase Price as provided herein, if prior to the termination of the Lease Term (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.

Section 9.02 **Inadequacy of Net Proceeds.** If the Net Proceeds are sufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01 hereof, Lessee shall either (a) complete the work and pay any cost in excess of the amount of Net Proceeds, and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds, Lessee shall make any payments pursuant to the provisions of this Section 9.02, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI hereof, or (b) if Lessee is not in default hereunder, Lessee shall pay to Lessor the amount of the then applicable Purchase Price, and, upon such payment, the Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Article XI of this Agreement. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Lessee.

ARTICLE X

DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE EQUIPMENT

Section 10.01 **Disclaimer of Warranties.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OF FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item or products or services provided for in this Agreement.

Section 10.02 **Vendor's Warranties.** Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

Section 10.03 **Use of the Equipment.** Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdiction in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment, provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

ARTICLE XI

OPTION TO PURCHASE

At the request of Lessee, Lessor's security interest in the Equipment will be terminated and this Agreement shall terminate:

- (a) at the end of the Lease Term (including Renewal Terms) upon payment in full of Rental Payments due hereunder, or
- (b) at the end of the Original Term or any Renewal Term upon payment by Lessee of the then applicable Purchase Price; or
- (c) if the Lease Term is terminated pursuant to Article IX of this Agreement, in the event of total damage, destruction or condemnation of the Equipment and, if Lessee is not on such date in default under this Agreement, upon payment of the then applicable Purchase Price to Lessor.

ARTICLE XII

ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING

Section 12.01 **Assignment by Lessor.** This Agreement, and the obligations of Lessee to make payments hereunder, may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time subsequent to its execution without the necessity of obtaining the consent of Lessee, provided, however, that no such assignment or reassignment shall be effective unless and until (i) Lessee shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee and (ii) in the event that such assignment or reassignment is made to a bank or trust company as trustee for holders of certificates representing interests in this agreement, such bank or trust company agrees to maintain or cause to be maintained, a book-entry system by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Lessee, to furnish such information to Lessee. Upon receipt of notice of assignment, Lessee agrees to reflect in a book entry the assignee designated in such notice of assignment and to make all payments to the assignee designated in the notice of assignment notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor or the assignee. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements which may be reasonably requested by Lessor or its assignee to protect their interests in the Equipment and in this Agreement.

Section 12.02 **No Sale, Assignment or Subleasing by Lessee.** This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

Section 12.03 **Release and Indemnification Covenants.** To the extent permitted by the laws and Constitution of the State, Lessee shall protect, hold harmless and indemnify Lessor from and against any and all liability obligations, losses, claims and damages whatsoever, regardless of cause thereof and expenses in connection therewith, including without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death of any person. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations

under this Agreement or the termination of the Lease Term for any reason. Lessee agrees not to withhold or abate any portion of the payments required pursuant to this Agreement by reason of any defects, malfunctions, breakdowns or infirmities of the Equipment.

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES

Section 13.01. **Events of Default Defined.** The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01 (a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

The foregoing provisions of this Section 13.01 are subject to (i) the provisions of Section 6.06 hereof with respect to nonappropriation; and (ii) if by reason of *force majeure* Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies, orders or restraints of any kind of the government of the United States of America or the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

Section 13.02. **Remedies on Default.** Whenever any event of default referred to in Section 13.01 hereof shall have happened and be continuing, Lessor shall have the right at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) With or without terminating this Agreement, retake possession of the Equipment and sell, lease or sublease the Equipment for the account of Lessee, holding Lessee liable for the rents and other amounts payable by Lessee hereunder to the end of the Original Term or the then current Renewal Term; and
- (b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment.

Section 13.03. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE XIV

MISCELLANEOUS

Section 14.01. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 14.02. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.03. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.04. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; nor shall any such amendment that affects the rights of Lessor's assignee be effective without such assignee's consent.

Section 14.05. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be in original and all of which shall constitute but one and the same instrument.

Section 14.06. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 14.07. **Captions.** The captions or heading in this Agreement are for convenience only and no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 14.08. **Entire Agreement.** This Agreement constitutes the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein regarding this Agreement or the Equipment leased hereunder. Any terms and conditions of any purchase order or other document (with the exception of Supplements) submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name with its corporate seal hereunto affixed and attested by its duly authorized officers, and Lessee has caused this Agreement to be executed in its corporate name with its corporate seal hereunto affixed and attested by its duly authorized officers. All of the above occurred as of the date first written below.

LESSOR: SECURITY PACIFIC CAPITAL MARKETS GROUP

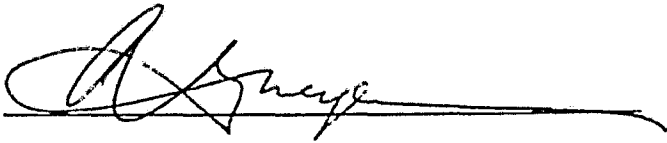
Attest:

By: _____ By: _____

Title: _____ Title: _____

LESSEE: City of Wilsonville

Attest:

By: _____ By:  _____

Title: _____ Title: Mayor

Date April 23, 1985

EXHIBIT A

**RESOLUTION OF GOVERNING BODY
EXTRACT OF MINUTES**

LESSEE:

DATE OF AGREEMENT:

At a duly called meeting of the governing body of Lessee (as defined in the Agreement) held on the _____ day of _____, 19__ the following resolution was introduced and adopted.

RESOLVED, whereas the governing body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment described in the Municipal Lease and Option Agreement presented to this meeting; and

WHEREAS, the governing body of Lessee has taken the necessary steps, including any legal bidding requirements, under applicable law to arrange for the acquisition of such equipment.

BE IT RESOLVED, by the governing body of Lessee that the terms of said Municipal Lease and Option Agreement are in the best interests of Lessee for the acquisition of such equipment, and the governing body of Lessee designates and confirms the following persons to execute and deliver, and to witness (or attest), respectively, the Security Pacific Capital Markets Group Municipal Lease and Option Agreement and any related documents necessary to the consummation of the transactions contemplated by the Municipal Lease and Option Agreement.

(Name of Party to Execute
Municipal Lease & Option Agreement)

(Title)

(Name of Party to Attest or
Witness Municipal Lease & Option
Agreement)

(Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect and further certifies that the above and foregoing Municipal Lease and Option Agreement is the same as presented at said meeting of the governing body of Lessee.

Secretary/Clerk

(SEAL)

Date

EXHIBIT B

OPINION OF LESSEE'S COUNSEL

(Please furnish in this form on Attorney's Letterhead)

Lessee: City of Beaverton

Date of Agreement: April 1988

(Lessor's name and address) Security Pacific

Gentlemen:

As counsel for City of Beaverton ("Lessee"), I have examined duly executed originals of the Municipal Lease and Option Agreement (the "Agreement") dated April, 1988, between Lessee and Security Pacific Capital Markets Group ("Lessor"), and the proceedings taken by Lessee to authorize and execute the Agreement. Based upon the examination and upon such other examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of the State of Oregon.

2. The Agreement has been duly authorized, executed and delivered by Lessee, pursuant to Constitutional, statutory and/or home rule provision which authorizes this transaction and Resolution No. _____, State of Authorization, attached as Exhibit A to the Agreement.

3. The Agreement is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms. In the event the Lessor obtains a judgement against Lessee in money damages, as a result of an event of default under the Agreement, Lessee will be obligated to pay such judgement.

4. Applicable public bidding requirements have been complied with.

5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or Federal, in any way questioning or affecting the validity of the resolution or the Agreement.

6. The signatures of the officers of _____ which appear on the Agreement are true and genuine; I know said officers and know them to hold the offices set forth below their names.

7. The Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.

8. The Municipality is a political subdivision within the meaning of Section 103 of the Internal Revenue Code and the related regulations and rulings and that the portion of payments identified as deferred interest charges to maturity, upon receipt, will not be includable in Federal gross income under statutes, regulations, court decisions and rulings existing on the date of this opinion and consequently, will be exempt from present Federal income taxes and income tax of the State of _____.

EXHIBIT C

CERTIFICATE AS TO ARBITRAGE

I, the undersigned officer of the City of Wilsonville (the "Lessee") being the person duly charged, with others, with responsibility for issuing the Lessee's obligation in the form of that certain agreement entitled "Municipal Lease and Option Agreement" (the "Agreement") dated April 23, 1985, and issued said date HEREBY CERTIFY that:

1. The Agreement was issued by the Lessee under and pursuant to law to finance the acquisition of certain equipment described therein.

2. Pursuant to the Agreement, the Lessee is entitled to receive said equipment in consideration for the obligation of the Lessee under the Agreement. Said equipment will be used in furtherance of the public purposes of the Lessee. The Lessee does not intend to sell said equipment or said Agreement or to otherwise dispose of said equipment during the term of the Agreement. The Lessee will not receive any monies, funds, or other "proceeds" as a result of the Agreement.

3. The Lessee expects to make payments under the Agreement from its general funds on the basis of annual appropriations in amounts equal to the required payments under the Agreement. The remaining general funds of the Lessee are not reasonably expected to be used to make such payments and no other monies are pledged to the Agreement or reasonably expected to be used to pay principal and interest on the Agreement.

4. The Lessee has not received notice that its Certificate may not be relied upon with respect to its own issues nor has it been advised that any adverse action by the Commissioner of Internal Revenue is contemplated.

To the best of my knowledge, information and belief the expectation herein expressed are reasonable and there are no facts, estimates or circumstances other than those expressed herein that would materially affect the expectations herein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of April, 1985.

LESSEE: City of Wilsonville

By: 

Title: Mayor

EXHIBIT D

DESCRIPTION OF EQUIPMENT

The Equipment which is the subject of the attached Municipal Lease and Option Agreement is as follows:

- 2 Model No. B26-WS4, Master workstation, 8MHz INTEL IAPX 186 processor with 512KB CPU, printer port, (1) RS422 and (2) RS232, X-bus connection, power supply w/cord, display, keyboard, 10MB winchester disk with 630KB diskette, power supply w/cord for disk.
- 1 Model No. B25-MX3, 10MB expansion disk (total-20MB)
- 1 Model No. B25-PS, Power supply with cord for expansion disk
- 2 Model No. B26-WSI, Cluster workstation, 8MHz, INTEL IAPX 186 Processor with 512KB CPU printer port, (1) RS422 and (2) RS232, X-bus connection, power supply w/cord, display and keyboard.
- 2 Model No. AP1351, 200CPS matrix printer with correspondence/graphics print
- 1 Model No. AP1305, 55CPS letter quality printer
- 1 Model No. PC-051, 50' cluster cables
- 1 Model No. B26-ST4, BIOS master operating system
- 1 Model No. B26-IS4, ISAM
- 1 Model No. B20-CBT, COBOL Compiler

Together with all additions, accessions and replacements thereto.

Lessee hereby certifies that the description of the personal property set forth above constitutes an accurate description of the "Equipment", as defined in the attached Municipal Lease and Option Agreement.

LESSEE: City of Wilsonville

By: 

Title: Mayor

Date: April 23, 1985

Agreement No. ____

EXHIBIT F

ACCEPTANCE CERTIFICATE

The undersigned, as Lessee under the Municipal Lease and Option Agreement (the "Agreement") dated _____, 19____, with _____ ("Lessor"), acknowledges receipt in good condition of all of the Equipment described in the Agreement and in Exhibit D thereto this _____ day of _____ and certifies that Lessor has fully and satisfactorily performed all of its covenants and obligations required under the Agreement.

Lessee confirms that the Commencement Date of the Agreement is _____ and it will commence payments in accordance with Article VI of the Agreement.

The undersigned officer of the Lessee hereby reaffirms in all respects the Certificate as to Arbitrage attached as Exhibit C to the Agreement, and represents that, to the best of his or her knowledge, information and belief, the expectations therein expressed were reasonable as of the date on which they were made, and are reasonable as of the Commencement Date, and that there were, and are as of the Commencement Date, no facts, estimates or circumstances other than those expressed therein that would materially affect the expectations expressed therein.

LESSEE:

By: _____

Title: _____

CITY OF



Wilsonville

30000 S.W. Town Center Loop E
P.O. Box 220 / Wilsonville, Oregon 97070-0220
503 / 682-1011

Agreement No. 664

EXHIBIT G

ESSENTIAL USE/SOURCE OF FUNDS LETTER

To: Security Pacific Capital Markets Group
410 17th Street, Suite 1150
Denver, Colorado 80202

Re: Municipal Lease & Option Agreement No. 664

Gentlemen:

Reference is made to that certain Municipal Lease and Option Agreement Number 664, dated 4-23-85, between Security Pacific Capital Markets Group and the City of Wilsonville, Oregon, leasing the personal property described in Exhibit D to such Lease. This confirms and affirms that the Property is essential to the function of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all the Property, which need is not temporary or expected to diminish in the foreseeable future. The Property will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. Specifically, the Property was selected by us to be used as follows:

To allow recording of all financial records and other pertinent data under the direction of the Finance and Administration Departments. Will also be used for Engineering, Spread Sheets, etc., under the direction of other City Departments.

The estimated useful life of the Property based upon manufacturer's representations and our projected needs is seven (7) years.

Our source of funds for payments of rent due under the Lease for the current fiscal year is the General fund.

LESSEE: City of Wilsonville

By: 

Title: Mayor

INSURANCE COVERAGE REQUIREMENTS

TO: Security Pacific Capital Markets Group
410 17th Street, Suite 1150
Denver, Colorado 80202

FROM: City of Wilsonville
P. O. Box 220
Wilsonville, Oregon 97070

SUBJECT: INSURANCE COVERAGE REQUIREMENTS

1. In accordance with Section 8.03 of the Agreement, we have instructed the insurance agent named below (please fill in name, address and telephone number)

Alexis Risk Management Contact: Shayla Potts/Rob West
851 SW 6th Avenue, Suite 700
Portland, OR 97204
Telephone - 221-1500 or 1-800-452-8149

to issue:

a. All Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming "Security Pacific Capital Markets Group and/or its assigns" as Loss Payee.

Coverage Required: Full Replacement Value

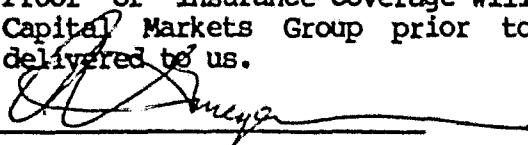
b. Public Liability Insurance evidence by a Certificate of Insurance naming "Security Pacific Capital Markets Group and/or its assigns" as an Additional Insured.

Minimum Coverage Required:
\$500,000.00 per person
\$500,000.00 aggregate bodily injury liability
\$100,000.00 property damage liability

OR

2. Pursuant to Section 8.03 of the Agreement, we are self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letter form together with a copy of the statute authorizing this form of insurance.

3. Proof of insurance coverage will be provided to Security Pacific Capital Markets Group prior to the time that the equipment is delivered to us.

By: 

Dated: April 23, 1985