

A-19392

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M O R T G A G E

THIS INDENTURE of mortgage made this 10th day of January, 1969, by and between KEITH RICE, INC., an Oregon Corporation, hereinafter called the mortgagor, and KATHRYNE R. EARHART, a widow; UNITED STATES NATIONAL BANK OF OREGON, a national banking association, Trustee under the Last Will and Testament of SAMUEL D. EARHART, deceased, hereinafter called the mortgagee,

W I T N E S S E T H :

That the mortgagor, in consideration of the sum of Thirty Thousand and no/100 (\$30,000.00) Dollars received from the mortgagee, does hereby grant, bargain, sell and convey to said mortgagee, its successors and assigns forever, all of that certain property situated in the City of Klamath Falls, County of Klamath, State of Oregon, and described as follows, to-wit:

Beginning on the Southwesterly line of Seventh Street at a point 50 feet northwest of the most easterly corner of Lot 1, Block 38 of ORIGINAL TOWN of Linkville, now City of Klamath Falls, Oregon; thence Northwesterly along the Southwesterly line of Seventh Street, 65 feet; thence Southwesterly at right angles to Seventh Street, 81 feet; thence Southeasterly parallel to Seventh Street, 65 feet; thence Northeasterly at right angles to Seventh Street, 81 feet to the place of beginning, being a part of Lots One (1) and Two (2) of Block Thirty-eight (38) of the ORIGINAL TOWN of Linkville, now City of Klamath Falls, Oregon.

SAVING AND EXCEPTING, the Northwesterly 5 feet thereof heretofore conveyed to the City of Klamath Falls, a municipal corporation of the State of Oregon.

together with all and singular the privileges, tenements, hereditaments and appurtenances now or hereafter thereunto belonging, or in any wise appertaining, including, but not limited to, any and all party wall agreements, easements, rights of way, water rights and all other rights and privileges owned or enjoyed by the mortgagor with respect to said property or any part thereof, whether or not appurtenant thereto.

TO HAVE AND TO HOLD, said property unto said mortgagee, its successors and assigns, forever.

And said mortgagor does hereby covenant to and with said mortgagee, its successors and assigns, that said mortgagor is lawfully seized in fee simple of the property above described; that said property is free and clear of all liens and encumbrances of every nature and kind whatsoever, and that said mortgagor will forever warrant and defend the same unto the said mortgagee, its successors and assigns, against the lawful claims and demands of all persons whomsoever.

The condition of this conveyance is such that whereas said mortgagee has actually loaned and advanced to said mortgagor, and said mortgagor has received the just and full sum of Thirty Thousand and no/100 (\$30,000.00) Dollars, to be repaid according to the terms of one principal note of even date executed by the mortgagor for Thirty Thousand and no/100 (\$30,000.00) Dollars, and repayable monthly the unpaid balance of principal and interest, if any then remains unpaid, to be due and payable ten years from date, and payable to the order of mortgagee and bearing interest as in said note provided, and further providing for the payment of such sum as the court shall adjudge reasonable as attorneys' fees in case of suit or action thereon.

NOW, THEREFORE, if the said mortgagor or mortgagor's heirs, successors or assigns, shall pay to said mortgagee, its successors or assigns, said sum of Thirty Thousand and no/100 (\$30,000.00) Dollars, with interest thereon according to the tenor and effect of said note and of any extensions or renewals thereof or of any part thereof, in accordance with the terms of the note or notes evidencing such future advances, and of any extensions or renewals thereof, or of any part thereof, and shall keep and perform all and singular the covenants and agreements herein contained, for said mortgagor to keep and perform, then these presents shall cease and be void, but otherwise, shall remain in full force and effect.

And said mortgagor hereby covenants and agrees with said mortgagee, its successors and assigns, as follows:

FIRST: that said mortgagor will pay said note together with all interest accrued thereon, promptly as the same become due.

SECOND: that so long as said note, or any other indebtedness secured hereby shall remain unpaid, in whole or in part, said mortgagor will pay all taxes, assessments and other charges that may be levied or assessed upon or against said property, this mortgage, and the debt secured hereby, before they become delinquent and promptly deliver receipts therefor to the mortgagee, and will comply with and be bound by all rules and regulations of any governmental authority affecting said property and of any governmental agency having an interest in the loan secured hereby.

THIRD: that said mortgagor will keep the buildings covered by the lien hereof, in good order, repair and condition and will not do or permit waste of the property hereby mortgaged; and said mortgagor will not make any structural changes in the building on said mortgaged property or remove any part thereof without the prior written consent of the mortgagee. Upon any failure of the mortgagor to maintain said improvement or otherwise perform the mortgagor's obligations, as set forth in this paragraph, the mortgagee may, at its option, cause reasonable maintenance work to be performed at the cost of the mortgagor, and any amounts so paid by the mortgagee, with interest thereon at the rate set forth in the note secured hereby, shall, if not repaid by the mortgagor upon demand, thereupon become a part of the indebtedness secured by this instrument; or, if the mortgagee shall so elect, the entire debt secured by this mortgage shall at once become due and payable, and all notice of such election is hereby waived.

FOURTH: that so long as said note, or any other indebtedness secured hereby, shall remain unpaid, in whole or in part, said mortgagor will keep the building now erected, covered by the lien hereof, insured against loss or damage by fire and such other hazards, and in such manner as the mortgagee may require, to the extent of not less at any time than the aggregate principal indebtedness secured hereby at that time, or the full insurable value of said property, whichever is the smaller amount, as to each such risk (provided, however, that if any of the policies of such insurance contain any conditions or provisions as to co-insurance, the property shall be kept insured for a sufficient amount also to comply with such co-insurance condition) in some company or companies acceptable to said mortgagee, or in such company or companies as said mortgagee may, at its election, specify, and for the benefit of said mortgagee, and will deliver the policies and renewals for all insurance on said property with suitable and satisfactory mortgage clauses endorsed thereon, to said mortgagee promptly after the issue thereof; and should the mortgagor fail to obtain such insurance or to deposit said policies as herein provided, or deposit renewals of said policies five (5) days before any such policies expire, said mortgagee may procure said insurance, or renewals, at the expense of said mortgagor and any amounts paid therefor by the mortgagee, with interest thereon at the rate set forth in the note secured hereby, shall, if not repaid by the mortgagor upon demand, thereupon become a part of the indebtedness secured by this instrument. In the event of loss, the mortgagor

will give immediate notice by mail to the mortgagee, and the mortgagee may make proof of loss if not made promptly by the mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the mortgagee instead of to the mortgagor and the mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In event of foreclosure of this mortgage, or other transfer of title to the mortgaged property in extinguishment of the indebtedness secured hereby, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee.

FIFTH: that said mortgagor will complete any and all buildings and improvements on said mortgaged premises now or hereafter in course of construction or repair, within five (5) months from the date hereof and pay in full all costs and expenses incident thereto.

And it is further expressly understood and agreed as follows:

1. Should said mortgagor fail to pay and installment of principal or interest, as the same becomes due, the entire debt secured by this mortgage shall at once become due and payable, if the mortgagee so elects, and all notice of such election is hereby waived.

2. Should said mortgagor fail to pay any taxes or any installment of any assessment for local improvements heretofore or hereafter made, which is or may be payable in installments and which is or may become a lien on said premises, within fifteen (15) days after the same shall become due, the entire debt secured by this mortgage shall at once become due and payable, if the mortgagee so elects, and all notice of such election is hereby waived.

3. Should the mortgagor fail to make payment of any taxes, assessments, insurance premiums, or other charges payable by the mortgagor, said mortgagee may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured by this mortgage, without waiver of any rights arising from breach of any of the covenants hereof, and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the mortgagor, shall be bound to the same extent that they are bound for the payment of the obligations herein described, and all such payments shall be immediately due and payable without notice, and the non-payment thereof shall, at the option of the mortgagee, render all sums secured by this mortgage, immediately due and payable, and constitute a breach of this mortgage.

4. Should said mortgagor permit any lien for labor or materials to be filed against said premises, or any part thereof, and remain unpaid for more than fifteen (15) days, and pay all costs and expenses incident thereto: (a) the mortgagee shall have the right, at its option, to pay and satisfy said lien or liens, and add the amount so paid to the mortgage debt to be secured by this mortgage; provided, however, that if the mortgagor shall notify the mortgagee that the mortgagor is contesting any such lien and shall indemnify the mortgagee with respect to such lien in such manner as the mortgagee may require, the mortgagee shall not pay such specified lien, and the mortgagor's failure to pay the same shall not constitute a breach of this mortgage; or (b) the mortgagee shall have the right, at its option, to complete the repair of said buildings and improvements (the mortgagor hereby expressly appointing the mortgagee as agent for such purpose) and any sums of money so expended by the mortgagee for completing the repair of said buildings and improvements and for the payment of any existing claims for labor or materials, or both, shall be included in and added to the mortgage debt, to be secured hereby; or (c) the mortgagee, at

its option, may declare all sums secured by this mortgage immediately due and payable. It is expressly understood and agreed that all claims paid by the mortgagee under (a) or (b) shall be conclusive upon the mortgagor as to the validity and amount of such claims.

5. In the event that any portion or all of said mortgaged property shall be taken under the right of eminent domain or condemnation, the mortgagee shall have the right, if it so elects, to require that all or any portion of the moneys payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by the mortgagor in such proceedings, shall be paid to the mortgagee and applied by it first upon any reasonable costs and expenses and attorneys' fees necessarily paid or incurred by the mortgagee in such proceedings, and the balance applied upon the indebtedness secured hereby; and the mortgagor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon the mortgagee's request.

6. The mortgagor agrees to pay to the mortgagee all reasonable expenses incurred by mortgagee, at any time necessary in mortgagee's opinion for the protection of its interests or the enforcement of its rights, including but not limited to the cost of searching records, obtaining title reports, surveyor's reports, attorneys' opinions or mortgagee's title insurance, whether or not in connection with any suit or action; and the amount of such expenses, with interest thereon from the date incurred at the rate set forth in the note secured hereby, if not repaid by mortgagor upon demand, shall be secured by this mortgage.

7. As an additional security and pledge for the payment of said indebtedness, and subject to the terms and provisions of this mortgage, said mortgagor hereby bargains, sells and assigns to said mortgagee all the rents, issues and profits of said property accruing after a default hereunder and if a default hereunder shall occur and continue for a period of thirty (30) days, and a bill of complaint shall be filed to foreclose this mortgage, the court shall, on motion or application on said mortgagee, either at the time of filing such bill of complaint or thereafter, and without regard to the condition of said property at such time, appoint a receiver to collect the rents, issues and profits of said property during the pendency of such foreclosure and apply such rents, issues and profits to the payment, pro tanto, of the amounts due under this mortgage, first deducting all proper charges and expenses of such receivership, and after paying all taxes or assessments levied or assessed against said property and then unpaid, and said mortgagor agrees forthwith to surrender possession of said property to any receiver so appointed.

8. It is agreed that all of said mortgaged property, together with any and all additions thereto, may, at the option of the mortgagee be sold upon foreclosure subject to redemption. If said mortgaged property shall be sold and shall thereafter be redeemed, there shall be added to the amount to be paid for such redemption such amount as the purchaser at foreclosure sale, or such purchaser's successor in interest at the time of redemption, shall have expended during the redemption period to keep said property in satisfactory condition, including the cost of repairs and improvements made in the normal course of the administration of said property.

9. The mortgagor reserves the privilege of repaying at any time without premium or fee, the entire indebtedness secured hereby.

10. The mortgagor further agrees to pay to the mortgagee all costs, disbursements, and reasonable attorneys' fees incurred by mortgagee in any suit to foreclose this mortgage, or in any suit or other proceedings

which mortgagee is obliged to prosecute or defend in order to protect the lien hereof, or in collecting any delinquent installment whether or not any suit or action is commenced; and the amount of such costs, disbursements or fees, with interest thereon from the date incurred or paid at the rate set forth in the note secured hereby, if not repaid by mortgagor upon demand, shall be secured by this mortgage.

11. In the event of any transfer of the property herein described or any part thereof or any interest therein, whether voluntary or involuntary or by operation of law, the Mortgagee may, without notice to the Mortgagor or any one else, extend the time of payment, execute releases or partial releases from the lien of this mortgage or in any other respect modify the terms hereof without thereby affecting the personal liability of the mortgagor for the payment of the indebtedness hereby secured.

12. As additional security for the payment of said indebtedness, the mortgagor further agrees to assign to the mortgagee, upon request by the mortgagee, and in such manner as the mortgagee may require, any and all leases now or hereafter, during the period of the mortgage, entered into by the mortgagor with respect to the above described real property, or any portion thereof.

13. It is expressly understood and agreed that time and the exact performance of all the conditions hereof are of the essence of this contract.

14. Notwithstanding anything herein contained to the contrary, this is a purchase money mortgage.
IN WITNESS WHEREOF, said mortgagor has properly executed this instrument the day and year herein first written.

KEITH RICE, INC., An Oregon Corporation

By

Keith L. Rice

By

Fred Burgoyne

STATE OF OREGON)

County of Klamath)

January 10, 19 69)

Personally appeared Keith L. Rice and Fred Burgoyne, who, being sworn, stated that he is they are the President Secretary of KEITH RICE, INC., corporation and that the seal affixed hereto is its seal and that this Mortgage was voluntarily signed and sealed in behalf of the corporation by authority of its Board of Directors. Before me:

Official Seal

Winifred Hartin
Notary Public for Oregon

My commission expires

My Commission Expires Nov. 23, 1969

STATE OF OREGON, COUNTY OF KLAMATH; ss.

Filed for record at request of Klamath County Title Insurance Co.

this 22nd day of January, A. D. 1969, at 5:23 o'clock P. M., and

duly recorded in Vol. M 69, of 5 Mortgage on Page 569

Fee \$ 7.50 By Wm. D. Milne County Clerk



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