

34027

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1 THIS MORTGAGE, Made this 24th day of April, 1972, between CHEYNE & OWENS,  
2 INC., a corporation duly organized and existing under the laws of the State of  
3 Oregon, hereinafter called Mortgagor, and ROBERT E. CHEYNE and HELEN J.  
4 CHEYNE, husband and wife, and J. BRUCE OWENS and E. MARIE OWENS, husband and  
5 wife, hereinafter called Mortgagees,

## W I T N E S S E T H:

7 That the said Mortgagor, in consideration of the sum of One Hundred  
8 Seventy-Five Thousand (\$175,000.00) Dollars, to it paid by said mortgagees,  
9 does hereby grant, bargain, sell and convey unto said mortgagees in propor-  
10 tions as hereinafter set forth, and their heirs and assigns, the following des-  
11 property situated in Klamath County, State of Oregon, bounded and described  
12 as follows:

13 SE $\frac{1}{4}$ SW $\frac{1}{4}$  and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, Township 39 South, Range 10 E.W.M.,  
14 SAVING AND EXCEPTING from the said SW $\frac{1}{4}$ SW $\frac{1}{4}$  that portion thereof con-  
15 veyed by W. P. McMillan, et ux, to Jay J. Arant by deed dated June 6,  
16 1910, recorded June 6, 1910, Deed Book 31 at page 98, Records of  
Klamath County, Oregon, as follows, to-wit: All that portion of the  
SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5 lying Westerly of public road in Section 5,  
Township 39 South, Range 10 E.W.M.

17 That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 and of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section  
18 8 which lies Northeasterly of the following described line: Beginning  
19 at a point 7.5 feet West of the corner common to Sections 5, 6, 7 and  
20 8, Township 39 S. R. 10 E.W.M.; thence South 26°39' East 16.7 feet to  
21 a point on the line of said Sections 7 and 8 which point is 15 feet  
22 South of the corner common to said Sections 5, 6, 7 and 8; thence  
continuing South 26° 39' East 1344.3 feet more or less to a point on  
the South line of the said NW $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 8 which is 665 feet  
more or less East from the SW corner of said NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of said  
Section 8.

23 The E $\frac{1}{2}$ NW $\frac{1}{4}$  and that portion of the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 8, Town-  
24 ship 39 S. R. 10 E.W.M. lying North of the Klamath Falls-Lakeview  
25 Highway, SAVING AND EXCEPTING from said portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  that  
26 portion thereof conveyed to School District No. 11 by a Deed ack-  
nowledged February 5, 1910, and recorded February 26, 1910, in  
Deed Book 28 at page 338, and NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, Township 39  
South, Range 10 East of the Willamette Meridian.

27 Together with all and singular the tenements, hereditaments and appurtenan-  
28 ces thereunto belonging or in anywise appertaining, and which may hereafter  
29 thereto belong or appertain, and the rents, issues and profits therefrom, and  
30 any and all fixtures upon said premises at the time of the execution of this  
31 mortgage or at any time during the term of this mortgage.

32 TO HAVE AND TO HOLD the said premises with the appurtenances unto the said

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1 mortgagees, their heirs, executors, administrators, successors and assigns,  
 2 in proportions as follows:  
 3 Unto Robert E. Cheyne and Helen J. Cheyne, husband and wife, an  
 4 undivided one-half interest therein as joint tenants with right  
 of survivorship and not as tenants in common;  
 5 Unto J. Bruce Owens and E. Marie Owens, husband and wife, an  
 6 undivided one-half interest therein as joint tenants with right  
 of survivorship and not as tenants in common.  
 7 This mortgage is intended to secure the payment of one certain promissory  
 8 note in words and figures substantially as follows:  
 9

\$175,000.00

Klamath Falls, Oregon,

April 24, 1972

The undersigned corporation promises to pay to the order of Robert E. Cheyne and Helen J. Cheyne, husband and wife, and J. Bruce Owens and E. Marie Owens, husband and wife, each husband and wife as to an undivided one-half interest, and each husband and wife, to hold with right of survivorship, at Klamath Falls, Oregon, One Hundred Seventy-Five Thousand Dollars (\$175,000.00), with interest thereon at the rate of 6½% per annum from date hereof until paid, payable in installments, at the dates and in the amounts as follows:

Interest only on April 24, 1973 and on April 24, 1974; \$11,666.66 plus interest on April 24, 1975, and \$11,666.66 plus interest on the 24th day of each April thereafter, until the whole sum, principal and interest, has been paid; if any of said installments is not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holders of this note. If this note is placed in the hands of an attorney for collection, the undersigned promises and agrees to pay the reasonable collection costs of the holders hereof; and if suit or action is filed hereon, also promises to pay (1) holders' reasonable attorney's fees to be fixed by the trial court and (2) if any appeal is taken from any decision of the trial court, such further sum as may be fixed by the appellate court, as the holders' reasonable attorney's fees in the appellate court.

It is the intention of the parties hereto that said payees do not take the title hereto as tenants in common, but that payees Robert E. Cheyne and Helen J. Cheyne, husband and wife, take title with right of survivorship and that on the death of either thereof the right to receive payment of their undivided one-half interest herein shall vest absolutely in the survivor of them; and that payees J. Bruce Owens and E. Marie Owens, husband and wife, take title with right of survivorship and that on the death of either of them the right to receive payment of their undivided one-half interest herein shall vest absolutely in the survivor of them.

CHEYNE &amp; OWENS, INC.

By /s/ J. Bruce Owens  
 President

BY /s/ E. Marie Owens  
 Secretary

(SEAL)

29  
 30 And said mortgagor covenants to and with mortgagees, their heirs, executors,  
 31 administrators, successors and/or assigns, that it is lawfully seized in fee  
 32 simple of said premises and has a valid, unencumbered title thereto, subject

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1 only to a first mortgage thereon to Mildred D. Cunningham (now Mildred D.  
2 Bergen), which mortgage mortgagor covenants it will pay and perform according  
3 to its terms, and will warrant and forever defend the same against all persons;  
4 that it will pay said note, principal and interest, according to the terms  
5 thereof; that while any part of said note remains unpaid it will pay all taxes,  
6 assessments and other charges of every nature which may be levied or assessed  
7 against said property, or this mortgage or the note above described, when due  
8 and payable and before the same may become delinquent; that it will promptly  
9 pay and satisfy any and all liens or encumbrances that are or may become liens  
10 on the premises or any part thereof superior to the lien of this mortgage;  
11 that it will keep the buildings now on or which may be hereafter erected on  
12 the premises insured in favor of the mortgagees against loss or damage by fire  
13 in the sum of insurable value, in such company or companies as the mortgagees  
14 may designate and will have all policies of insurance on said property made payable  
15 to the mortgagees as their interest may appear and will deliver all policies of  
16 insurance on said premises to the mortgagees as soon as insured; that it will  
17 keep all buildings and improvements on said premises in good repair and will  
18 not commit or suffer any waste of said premises.

19 It is further understood and agreed that mortgagees will furnish mortgagor  
20 releases of parcels as they are developed and sold. The amount paid for the  
21 releases shall be applied first to interest and then to principal and shall be  
22 applied on the next annual installment. The amount paid for the releases  
23 shall be \$1500.00 per acre, from which payment a sufficient amount will be paid  
24 to Mildred D. Bergen (formerly Mildred D. Cunningham) for a like release of  
25 parcels from her first mortgage. The releases shall be on the same terms and  
26 conditions as the releases on Mrs. Cunningham Bergen's mortgage and amendments  
27 thereto.

28 Now, therefore, if said mortgagor shall keep and perform the covenants here-  
29 in contained and shall pay said note according to its terms, this conveyance  
30 shall be void, but otherwise shall remain in full force as a mortgage to secure  
31 the performance of all of said covenants and the payment of said note, it being  
32 agreed that a failure to perform any covenant herein, or if proceeding of any

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1 kind be taken to foreclose any lien on said premises or any part thereof, the  
 2 mortgagees shall have the option to declare the whole amount unpaid on said  
 3 note or on this mortgage at once due and payable, and this mortgage may be  
 4 foreclosed at any time thereafter. And if mortgagor shall fail to pay any  
 5 taxes or charges or any lien, encumbrance or insurance premium as above pro-  
 6 vided for, the mortgagees may at their option do so, and any payment so made  
 7 shall be added to and become a part of the debt secured by this mortgage and  
 8 shall bear interest at the same rate as said note without waiver, however, of  
 9 any right arising to the mortgagees for breach of covenant. And this mortgage  
 10 may be foreclosed for principal, interest and all sums paid by the mortgagees  
 11 at any time while the mortgagor neglects to repay any sums so paid by the  
 12 mortgagees. In the event any suit or action is instituted to foreclose this  
 13 mortgage, the mortgagor agrees to pay all costs and disbursements allowed by  
 14 law and such sum as the court may adjudge reasonable as plaintiff's attorney's  
 15 fees in such suit or action, together with the reasonable costs incurred by  
 16 the mortgagees for title reports and title search, all such sums to be secured  
 17 by the lien of this mortgage and included in the decree of foreclosure.

18 Each and all of the covenants and agreements herein contained shall apply  
 19 to and bind the heirs, executors, administrators, successors and/or assigns of  
 20 said mortgagor and of said mortgagees respectively.

21 In case suit or action is commenced to foreclose this mortgage the Court may,  
 22 upon motion of mortgagees, appoint a receiver to collect the rents and profits  
 23 arising out of said premises during the pendency of such foreclosure, and apply  
 24 the same to the payment of the amount due under this mortgage, first deducting  
 25 all proper charges and expenses attending the execution of said trust.

26 IN WITNESS WHEREOF, CHEYNE & OWENS, INC., pursuant to a resolution of its  
 27 Board of Directors, duly and legally adopted, has caused these presents to be  
 28 signed by its President and Secretary, and its corporate seal to be hereunto  
 29 affixed this 24th day of April, 1972.

CHEYNE & OWENS, INC.

BY J. Bruce Owens  
President

by E. Maria Owens  
Secretary

(SEAL)  
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1 STATE OF OREGON )  
2 County of Klamath ) SS

3 On this 24th day of April, 1972, before me appeared J. Bruce Owens and  
4 E. Marie Owens, both to me personally known, who being duly sworn, did say  
5 that he, the said J. Bruce Owens, is the President, and she, the said E. Marie  
6 Owens, is the Secretary of Cheyne & Owens, Inc., the within named Corporation,  
7 and that the seal affixed to said instrument is the corporate seal of said  
8 Corporation, and that said instrument was signed and sealed in behalf of said  
9 Corporation by authority of its Board of Directors, and J. Bruce Owens and  
10 E. Marie Owens acknowledged said instrument to be the free act and deed of  
11 said Corporation.

12 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official  
13 seal the day and year last above written.

*Caroline N. Marshall*  
Notary Public for Oregon

14  
15 (SEAL)

16  
17 My Commission expires: February 9, 1974

18 STATE OF OREGON,  
19 County of Klamath  
20 Filed for record at request of  
21 GANONG GORDON & SISEMORE  
22 on this 11th day of May A.D. 19 72  
23 at 2:26 o'clock P M, and duly  
24 recorded in Vol. M 72 of MORTGAGES  
25 PAGE 5029  
26 Wm D. MILNE, County Clerk  
27 By *Raymond* Deputy  
28 FEE \$10.00

Ret.  
29  
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31  
32  
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