

27089

MORTGAGE

Vol. 77 Page

4871

38-12084

KNOW ALL MEN BY THESE PRESENTS, That

TWIN CITY BUILDERS, INC.

hereinafter called the "Mortgagor", in consideration of the principal sum of \$ 1,360,000.00 paid to the Mortgagor by THE UMPQUA SAVINGS AND LOAN ASSOCIATION, an Oregon corporation, hereinafter called the "Mortgagee", does by these presents grant, bargain, sell and convey unto the Mortgagee all the following described property lying and being in the County of Douglas and State of Oregon, to-wit:

See Exhibit "A", attached hereto and made a part hereof

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This mortgage is also subject to the terms of a Loan Agreement between Mortgagor and Mortgagee executed coincidentally herewith the terms of which are incorporated herein. *A.R.V.*

together with the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any wise appertaining; also, all such apparatus, equipment and fixtures now or hereafter situate on said premises, as are ever furnished by landlords in letting unfurnished buildings similar to the one situated on the real property hereinabove described, including, but not exclusively, all fixtures and personal property used or intended for use for plumbing, lighting, heating, cooking, cooling, ventilating or irrigating, linoleum and other floor coverings attached to floors, shelving, counters and other store, office and trade fixtures; also, the rents, crops, issues and profits arising from or in connection with the said real and personal property or any part thereof.

TO HAVE AND TO HOLD the same unto Mortgagee, its successors and assigns forever.

This conveyance is intended as a mortgage to secure the performance of the covenants and obligations herein required by the Mortgagee to be kept and performed, and to secure the payment of a certain promissory note of even date, the terms of which are incorporated herein by reference, executed by the Mortgagor to the Mortgagee, and providing for the payment of the aforesaid principal sum with interest from date at the rate of ten (10) percentum per annum on the unpaid balance until paid, said principal and interest to be payable at the office of the Mortgagee in Roseburg, Douglas County, Oregon, or at such other place as the holder of the note may designate in writing, in monthly installments of \$ 12,358.49 on the first day of each month hereafter until the principal and interest are fully paid. The entire principal and interest balance will become due and payable twenty years after the first payment.

FUTURE ADVANCES. This conveyance is also intended to secure any advances made by the Mortgagee to the Mortgagor, or his successor in title, for any purpose at any time before the release and cancellation of this mortgage, but at no time shall this mortgage secure additional advances in a sum in excess of \$ -0- provided that nothing herein contained shall be considered as limiting the amounts that may be secured hereby when advanced to protect the security or in accordance with the covenants contained in this mortgage.

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on Page 4871

FEE \$ 15.00

WM. D. MILNE, County Clerk

By *Harold D. Dwyer* Deputy

PRE-PAYMENT. Mortgagor may pay at any time, without any premium or other surcharge, any amount in addition to the installments as set forth above to be applied against the principal provided, however, that should such additional payment exceed 20% of the original loan, Mortgagee shall have the right to charge a pre-payment charge of 1% of the principal amount then due unless said pre-payment is made after six consecutive monthly installments have been paid, in which event the pre-payment charge shall be an amount equal to thirty (30) days interest on the amount of the pre-payment.

LOAN PERSONAL. The loan secured by this mortgage has been made by the Mortgagee based upon the reliability and integrity of the Mortgagor. If the property is occupied or is to be occupied by the Mortgagor, such personal occupancy is declared to be a material inducement to the Mortgagee to make said loan.

The Mortgagor does hereby covenant and agree to and with the Mortgagee, its successors and assigns that:

1. **TITLE.** He is seized in fee simple of said premises and every part thereof and is entitled to the possession thereof; there are no liens or encumbrances against the same and none superior to this mortgage will be created or suffered by the Mortgagor during the life of this mortgage; he shall forever warrant and defend said premises unto the Mortgagee against the lawful claims of all persons whomsoever.
2. **ADVANCEMENTS.** He will pay promptly when due and payable all indebtedness secured by this mortgage; he will repay to Mortgagee, immediately and without demand, all funds hereafter advanced by Mortgagee pursuant to any covenant or agreement hereinafter contained or for any purpose, with interest thereon from date of advance until repaid, at the rate of Ten percent (10%) per annum.
3. **TAXES.** He will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore.
4. **SUBROGATION.** Mortgagee shall be subrogated to the lien, though released of record, of any prior conveyances on the said premises paid or discharged from the proceeds of the loan represented by this mortgage.
5. **SALE, CHANGE OF OCCUPANCY, OR ALTERATION.** If the Mortgagor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner, whether voluntarily or involuntarily, without the written consent of the Mortgagee being first had and obtained, Mortgagee shall have the right, at its option, to declare any indebtedness or obligation secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable. In the event of an alteration, repair, remodeling addition or removal of any building or buildings now or hereafter upon said property without the written consent of the Mortgagee being first had and obtained, Mortgagee shall have the right, at its option, to declare any indebtedness or obligation secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable. Should Mortgagor sell the above described real property, or any part thereof, and Mortgagee consents to such sale, Mortgagor agrees to pay such additional interest on the unpaid balance as shall be determined by the Mortgagee, but not to exceed the maximum rate permitted by law.
6. **REPAIR.** He will abstain from the commission of waste upon the said premises and will not permit waste thereon, and shall keep the buildings and improvements now or hereafter erected thereon in sound condition and in good repair; and if any improvements be under construction, to promptly complete the same, and to do no act whatsoever whereby the premises hereby mortgaged shall become less valuable, and not to use the premises for any unlawful purposes.
7. **INSURANCE.** He will keep the improvements now existing or hereafter erected on the mortgaged property continuously insured against loss by fire and other hazards, casualties, and contingencies in such amounts and for such periods as may be required by the Mortgagee, but in an amount not less than the unpaid balance of the indebtedness hereby secured, and will pay promptly, when due, any premiums on such insurance. All insurance shall be carried in companies approved by Mortgagee and the policies and renewals thereof shall be held by Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee. In event of loss, he will give immediate notice by mail to Mortgagee, and Mortgagee may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by 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.
8. **COLLATERAL SUIT.** If the Mortgagee is made or becomes a party to any suit or action by reason of this mortgage or the indebtedness hereby secured, the Mortgagor will pay all expenses incurred by the Mortgagee therein, including a reasonable attorney's fee.
9. **ASSIGNMENT.** If the Mortgagor shall assign or attempt to assign the rents, issues, or profits or any part thereof of the premises mortgaged hereby without the written consent of the Mortgagee, then, at the option of the Mortgagee, the debt hereby secured shall immediately become due.
10. **TAXES AND INSURANCE RESERVES.** For the purpose of payment of taxes and to provide for payment of insurance premiums on insurance required hereunder, Mortgagor shall pay to Mortgagee coincidently with the installments as provided above a sum equal to 1/12th of the estimated annual taxes and assessments against the premises above described, together with a sum equal to 1/12th of the estimated annual hazard insurance premiums required hereunder, said sum to be held by Mortgagee, without interest, and expended for the payment of taxes and insurance premiums.
11. **GUARANTY.** In the event ownership of the mortgaged premises or any part thereof becomes vested in person or persons other than Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest with reference to this mortgage and the note hereby secured either by way of forbearance on the part of the Mortgagee or extension of time of payment of the debt or any sum hereby secured, or any other term or provision of the within Mortgage, without in any way releasing, discharging, modifying, changing, or in anywise affecting the covenants, conditions, or lien of this mortgage or the original liability of the Mortgagor or the note secured hereby, either in whole or in part.

EXHIBIT A

The Housing Project shall consist of the proposal submitted by Twin City Builders, Inc., dated December 18, 1974, and April 21, 1975; approved by the Housing Authority of Klamath Falls on January 6, 1975, and April 25, 1975; and approved by HUD on May 16, 1975.

The proposal shall include an 81-unit apartment project of ten (10) one-story row buildings and one (1) one-story rec/laundry/office building and which will be comprised of 80 one-bedroom units and one two-bedroom unit.

of this mortgage or the original liability of the Mortgagor or the note secured hereby, either in or in part.

EXHIBIT A

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The Housing Project shall consist of the proposal submitted by Twin City Builders, Inc., dated December 18, 1974, and April 21, 1975; approved by the Housing Authority of Klamath Falls on January 6, 1975, and April 25, 1975; and approved by HUD on May 16, 1975.

The proposal shall include an 81-unit apartment project of ten (10) one-story row buildings and one (1) one-story rec/laundry/office building and which will be comprised of 80 one-bedroom units for the elderly and one two-bedroom manager's unit. Said project will be constructed on a piece of land bounded on the north by Wantland Avenue, on the east by the Main Reclamation Canal, on the south by Eberlein Avenue, and on the west by Applewood Street (unimproved). The subject property is more fully described as follows:

Parcel 1

The following described real property in Klamath County, Oregon:

A tract of land 320 feet wide north and south, in ENTERPRISE TRACTS NO. 38A and NO. 41B, and lying North of the North Line of the County Road known as the extension of Eberlein Avenue and bounded on the North by the Northerly Line of Wantland Avenue of Darrow Addition to the City of Klamath Falls, Oregon, extended East to the right of way of the U.S.R.S. Canal; also, such fragments of Enterprise Tracts No. 30 lying South of the U.S.R.S. Canal, as may remain after conveyance heretofore made by Enterprise Land and Investment Company to the U.S.R.S. for right of way, and to Klamath County, Oregon, for road purposes, together with vacated portions of Allandale and Applewood Streets, described as Parcels 1 and 2 in Volume 70, Page 4511, Klamath County, recorded June 5, 1970, in the Southwest 1/4, Section 34, Township 38 South, Range 9 East, of the Willamette Meridian;

EXCEPTING, HOWEVER, those certain parcels heretofore conveyed to the United States of America for right of way of the Main Canal and "B" Lateral of the United States of America Irrigation System, and to Klamath County, Oregon, for rights of way of roads known as the extension of Eberlein Avenue and Washburn Way;

EXCEPTING, ALSO, that certain parcel of land deeded by Alfred D. Collier and Ethel F. Collier, husband and wife, to George H. Merryman and Mabel C. Merryman, husband and wife, and George H. Merryman, Jr. and Elizabeth F. Merryman, husband and wife, recorded May 2, 1941, in Book 137 at Page 359, Deed Records of Klamath County, Oregon;

EXCEPTING, ALSO, that certain parcel of land deeded by Alfred D. Collier and Ethel F. Collier, husband and wife, to Klamath County, Oregon, recorded May 11, 1941, in Book 137 at Page 542, Deed Records of Klamath County, Oregon;

BUT INCLUDING ALSO the rights and privileges reserved in said deed to Alfred D. Collier and Ethel F. Collier, said land being deeded to Klamath County, Oregon, for the use as a County Road as therein set forth.

EXCEPT that portion lying West of the East Line of vacated Applewood Street.

Parcel 2

The following described real property in Klamath County, Oregon:

A tract of land 320 feet wide North and South, in ENTERPRISE TRACTS NO. 38A and NO. 41B, and lying North of the North Line of the County Road known as

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on Page 4871

FEE \$ 15.00

WM. D. MILNE, County Clerk

By *Harold D. [Signature]*

Deputy

4874

the extension of Eberlein Avenue and bounded on the North by the Northerly Line of Wantland Avenue of Darrow Addition to the City of Klamath Falls, Oregon, extended East to the right of way of the U.S.R.S. Canal; also, such fragments of Enterprise Tracts No. 30 lying South of the U.S.R.S. Canal as may remain after conveyance heretofore made by Enterprise Land and Investment Company to the U.S.R.S. for right of way and to Klamath County, Oregon, for road purposes, together with vacated portions of Allandale and Applewood Streets described as Parcels 1 and 2 in Volume 70, Page 4511, Klamath County, recorded June 5, 1970, in the Southwest 1/4, Section 34, Township 38 South, Range 9 East, of the Willamette Meridian;

EXCEPTING, HOWEVER, those certain parcels heretofore conveyed to the United States of America for right of way of the Main Canal and "B" Lateral of the United States of America Irrigation System and to Klamath County, Oregon, for rights of way of roads known as the extension of Eberlein Avenue and Washburn Way;

EXCEPTING, ALSO, that certain parcel of land deeded by Alfred D. Collier and Ethel F. Collier, husband and wife, to George H. Merryman and Mabel C. Merryman, husband and wife, and George H. Merryman, Jr. and Elizabeth F. Merryman, husband and wife, recorded May 2, 1941, in Book 137 at Page 359, Deed Records of Klamath County, Oregon;

EXCEPTING, ALSO, that certain parcel of land deeded by Alfred D. Collier and Ethel F. Collier, husband and wife, to Klamath County, Oregon, recorded May 11, 1941, in Book 137 at Page 542, Deed Records of Klamath County, Oregon;

BUT INCLUDING ALSO the rights and privileges reserved in said deed to Alfred D. Collier and Ethel F. Collier, said land being deeded to Klamath County, Oregon, for the use as a County Road as therein set forth;

EXCEPT that portion lying East of vacated Applewood Street and West of the Centerline of vacated Allandale Street.

12. CONDEMNATION. In case the mortgaged premises or any part thereof shall be taken by condemnation, the Mortgagee is hereby empowered to collect and receive all compensation which may be paid for any property taken or for damages to any property not taken, and all condemnation moneys so received shall be forthwith applied by the Mortgagee as it may elect to the immediate reduction of the indebtedness secured hereby or to the repair and restoration of any property so damaged, provided that any excess over the amount of the indebtedness shall be delivered to the Mortgagor or his assignee.

13. WAIVER. No condition of this mortgage shall be deemed waived unless the same is expressly waived in writing by the Mortgagee.

14. NOTICE. Whenever any notice is required or permitted by the terms hereof, such notice shall be sufficient if personally served on one or more of the persons who shall at the time hold record title to the property herein described, or if enclosed in a postpaid envelope addressed to one or more of such persons or to the Mortgagor at the last address furnished to the Mortgagee, or at the mortgaged premises, and deposited in the United States mails.

15. RECEIVER. In any suit to foreclose this mortgage, the Mortgagee, without notice and without regard to the value of the mortgaged premises or the adequacy of any security for the debt, shall be entitled to the appointment of a receiver of the rents, issues and profits of said premises, with authority to such receiver to collect and receive the same and to take possession, management and control of said premises during the pendency of such foreclosure proceedings or until payment of the debt hereby secured; and any net rents, issues and profits so collected shall be applied upon the debt hereby secured.

16. RENT ASSIGNMENT. He hereby expressly assigns to the said Mortgagee any and all leases, rents and revenues from the said real property and premises of any part thereof; and the Mortgagor hereby expressly and irrevocably authorizes and empowers the said Mortgagee, its agents or attorneys, in the event of default in the performance of any of the provisions, covenants, agreements or conditions of this mortgage, and during the continuance of such default at its election and without notice to the Mortgagor or his successors in interest, to take and maintain full control and management, to oust tenants for non-payment of rent, to lease all or any portion of the premises on such terms as the Mortgagee may deem advisable, to make alterations or repairs which the Mortgagee may deem advisable and to deduct the cost thereof from the rents, and out of the amount or amounts so received pay the necessary operating expenses and retain or pay the customary charges for thus managing the property, and may then apply the remaining income in such manner as it may in its sole discretion deem advisable upon any portion of the indebtedness or advances secured hereby, and then render any overplus so collected to the said Mortgagor or his successors in interest; and the said Mortgagee, its agents and attorneys, shall be accountable only to the exercise of the above authority shall in no manner affect the right of Mortgagee to foreclose this mortgage in case of default and shall not in any manner retard such foreclosure if the said Mortgagee elects to commence such proceedings.

17. DEFAULT. If default be made in the payment of any installment of principal or interest or in performance of any of the covenants, stipulations, or agreements herein contained, the Mortgagee, at its option, and without notice, shall have the right to declare the entire sum hereby secured due and to foreclose this mortgage in the manner provided by law, and if any action or suit is brought for the foreclosure of this mortgage or the collection of said note, the Mortgagor will pay all costs and expenses, including abstracting and title examination expense, and will pay such attorney's fees either in the trial or any appellate court as the court may adjudge reasonable in such suit or action.

The covenants herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

NOTICE TO THE BORROWER: DO NOT SIGN THIS LOAN AGREEMENT BEFORE YOU READ IT. THIS LOAN AGREEMENT PROVIDES FOR THE PAYMENT OF A PENALTY IF YOU WISH TO REPAY THE LOAN PRIOR TO THE DATE PROVIDED FOR REPAYMENT IN THE LOAN AGREEMENT.

IN WITNESS WHEREOF, the Mortgagor has hereunto set his hand and seal this 11th day of March, 19 77.

TWIN CITY BUILDERS, INC.

BY: Stephen B. Graves (SEAL)
Stephen B. Graves, Secretary-Treasurer

(SEAL)

(SEAL)

(SEAL)

STATE OF OREGON }
COUNTY OF BOUGLAK } ss.
COOS

Personally appeared the above named Stephen B. Graves
Secretary-Treasurer of TWIN CITY BUILDERS, INC.
and acknowledged the foregoing instrument to be its voluntary act and deed.

BEFORE ME:

Notary

Notary Public for Oregon.

My Commission expires 6-2-78

STATE OF OREGON, COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 23rd day of MARCH, A.D., 19 77 at 10:51 o'clock A.M., and duly recorded in Vol. M 77, of MORTGAGES on Page 4871.

FEE \$ 15.00

WM. D. MILNE, County Clerk

By Deputy