

A-29234

## SECOND MORTGAGE

This Mortgage made this 25<sup>th</sup> day of April, 1978 by and between T. V. RICKBEIL, Trustee for T. V. RICKBEIL TRUST, Mortgagor to ALBERT W. SCHMECK and VADA H. SCHMECK, husband and wife, Mortgagees,

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

That said Mortgagor in consideration of \$20,000.00 to her paid by said Mortgagee, does hereby grant, bargain, sell and convey unto said mortgagee, their heirs, executors, administrators and assigns, that certain real property situated in Klamath County, State of Oregon, bounded and described as follows, to wit:

Beginning at a point on the Northerly line of Main Street (which is the Southerly line of Lot 4 in Block 15 of Original Town of Linkville, now City of Klamath Falls) which is 60 feet Easterly from the Southwest corner of said Lot 4; thence Easterly along the Northerly line of Main Street and the Southerly line of Lots 3 and 4 of said Block 15 to a point which is 20 feet Westerly from the Southeasterly corner of said Lot 3; thence Northerly parallel to Sixth Street 120 feet to the Northerly line of Lot 3, thence Westerly along the Northerly lines of Lots 3 and 4 to a point 60 feet Easterly from the Northwest corner of Lot 4, thence Southerly and parallel to Sixth Street 120 feet to the point of beginning, constituting all of said Lot 3 excepting Easterly 20 feet thereof and all of Lot 4, except the Westerly 60 feet thereof.

## SUBJECT TO:

1. That certain mortgage wherein FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION of Klamath Falls, Oregon, is mortgagee and ALBERT W. SCHMECK and VADA H. SCHMECK, husband and wife, are mortgagors, dated the 14th day of September, 1972, and recorded in Klamath County Deed Records at Volume M-72, Page 10565, which mortgage has an existing balance of \$51,487.49, which mortgage vendee hereby assumes and agrees to pay and hold vendor harmless therefrom.

1 Together with all and singular the tenements, heredita-  
 2 ments and appurtenances thereunto belonging or in anywise apper-  
 3 taining, and which may hereafter thereto belong or appertain, and  
 4 the rents, issues and profits therefrom, and any and all fixtures  
 5 upon said premises at the time of the execution of this mortgage  
 6 or at any time during the term of this mortgage.

7 TO HAVE AND TO HOLD the said premises with the appurten-  
 8 ances unto the said mortgagee, their heirs, executors, administ-  
 9 rators and assigns forever.

10 This mortgage is intended to secure the payment of a  
 11 promissory note, of which the following is a substantial copy:  
 12  
 13

\$ 20,000.00 Klamath Falls, OR May 1, 19 78  
 I (or if more than one maker) we, jointly and severally, promise to pay to the order of ALBERT W. SCHMECK and  
 VADA H. SCHMECK, husband and wife  
 and upon the death of any of them, then to the order of the survivor of them, at Klamath Falls, Oregon  
 Twenty Thousand and no/100----- DOLLARS.  
 with interest thereon at the rate of 8 percent per annum from May 1, 1978 until paid, payable in  
 monthly installments, at the dates and in the amounts as follows: \$312 per month, first payment  
 to be made on or before June 1, 1978, and a like payment on the 1st day  
 of each and every month thereafter until the full balance of principal  
 and interest is paid in full. It is further agreed and understood that  
 total of payments in any one year shall not exceed 20% of the existing  
 principal balance at the beginning of that year.  
 balloon payments, if any, will not be refinanced; interest to be paid monthly and ~~included in~~ the payments above re-  
 quired; said payments shall continue until the whole sum hereof, principal and interest, has been paid; if any of said installments is not  
 so paid, all principal and interest shall become immediately due and collectible at the option of the holder of this note. If this note is placed  
 in the hands of an attorney for collection, I/we promise and agree to pay the reasonable attorney's fees and collection costs of the holder  
 hereof, and if suit or action is filed hereon, also promise to pay (1) holder's 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 holder's rea-  
 sonable attorney's fees in the appellate court.  
 It is the intention of the parties hereto that the said payees do not take the title hereto as tenants in common but with the right  
 of survivorship, that is: on the death of any of the payees, the right to receive payment of the then unpaid balance of principal and in-  
 terest shall vest absolutely in the survivor of them.  
 \* Strike words not applicable.

T. V. Rickbeil  
 T. V. Rickbeil, Trustee for T. V.  
 Rickbeil Trust

FORM No. 692—INSTALLMENT NOTE—Survivorship.

SN Stevens-Ness Law Pub. Co., Portland, Ore.

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HENDERSON  
 & MOLATORE  
 ATTORNEYS AT LAW  
 428 MAIN STREET  
 KLAMATH FALLS,  
 OREGON 97601  
 TELEPHONES  
 (503) 884-7731  
 884-2030

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1           The date of maturity of the debt secured by this mortgage  
2 is the date on which the last scheduled principal payment be-  
3 comes due, to wit: May 1, 1985.

4           The mortgagor warrants that the proceeds of the loan  
5 represented by the above-described note and this mortgage are  
6 for an organization, (even if mortgagor is a natural person)  
7 are for business or commercial purposes other than agricultural  
8 purposes.

9           This mortgage is inferior, secondary and made subject to  
10 a prior mortgage on the above-described real estate made by  
11 FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION of Klamath Falls, Oregon  
12 to ALBERT W. SCHMECK and VADA H. SCHMECK, husband and wife, dated  
13 September 14, 1972 and recorded in the Mortgage Records of the  
14 above-named county in Book M-72, on page 10544 thereof; the said  
15 first mortgage was given to secure a note for the principal sum  
16 of \$60,000.00; the unpaid principal balance thereof on the date  
17 of the execution of this agreement is \$51,487.49; interest thereon  
18 is paid to May 1, 1978.

19           The mortgagor covenants to and with the mortgagee, their  
20 heirs, executors, administrators and assigns, that they are  
21 lawfully seized in fee simple of said premises; that the same  
22 is free from all encumbrances except said first mortgage and  
23 further except reservations, restrictions, rights-or-way, ease-  
24 ments of record and those apparent upon the land and that he will  
25 warrant and forever defend the same against all persons; further,  
26 that he will do and perform all things required of him and pay  
27 all obligations due or to become due under the terms of said first  
28 mortgage as well as the note secured hereby, principal and interest.

1 according to the terms thereof; that while any part of the note  
2 secured hereby remains unpaid he will pay all taxes, assessments  
3 and other charges of every nature which may be levied or assessed  
4 against said property, or this mortgage or the note secured  
5 hereby, when due and payable and before the same become delinquent;  
6 that he will promptly pay and satisfy any and all liens or  
7 encumbrances that are or may become liens on the premises or  
8 any part thereof superior to the lien of this mortgage; that he  
9 will keep the buildings now on or which hereafter may be erected  
10 on the said premises continuously insured against loss or damage  
11 by fire and such other hazards as the mortgagee may from time to  
12 time require, in an amount not less than \$85,000.00 in a company  
13 or companies acceptable to the mortgagee herein, with loss pay-  
14 able, first to the holder of the said first mortgage; second,  
15 to the mortgagee named herein and then to the mortgagor as their  
16 respective interests may appear; all policies of insurance shall  
17 be delivered to the holder of the said first mortgage as soon as  
18 insured and a certificate of insurance executed by the company  
19 in which said insurance is written, showing the amount of said  
20 coverage, shall be delivered to the mortgagee named in this  
21 instrument. Now if the mortgagor shall fail for any reason to  
22 procure any such insurance and to deliver said policies as afore-  
23 said at least fifteen days prior to the expiration of any policy  
24 of insurance now or hereafter placed on said buildings, the mort-  
25 gagee may procure the same at mortgagor's expense; that the mort-  
26 gator will keep the buildings and improvements on said premises  
27 in good repair and will not commit or suffer any waste of said  
28 premises. In the event any personal property is part of the  
security for this mortgage, then at the request of the mortgagee,  
SECOND MORTGAGE - Page 4.

1 the mortgagor shall join with the mortgagee in executing one or  
2 more financing statements pursuant to the Uniform Commercial Code,  
3 in form satisfactory to the mortgagee, and will pay for filing  
4 the same in the proper public office or offices, as well as the  
5 cost of all lien searches made by filing officers or searching  
6 agencies as may be deemed desirable by the mortgagee.

7 Now, therefore, if said mortgagor shall keep and per-  
8 form the covenants herein contained and shall pay all obligations  
9 secured by said first mortgage as well as the note secured hereby  
10 according to its terms, this conveyance shall be void, but other-  
11 wise shall remain in full force as a mortgage to secure the  
12 performance of all of said covenants and the payments of the note  
13 secured hereby; it being agreed that a failure to perform any  
14 covenant herein, or if a proceeding of any kind be taken to fore-  
15 close any lien on said premises or any part thereof, the mort-  
16 gagee shall have the option to declare the whole amount unpaid  
17 on said note or on this mortgage at once due and payable, and  
18 this mortgage may be foreclosed at any time thereafter. And if  
19 the mortgagor shall fail to pay any taxes or charges or any  
20 lien, encumbrance or insurance premium as above-provided for, or  
21 fail to do or perform anything required of him by said first  
22 mortgage, the mortgagee herein, at his option, shall have the  
23 right to make such payments and to do and perform the acts  
24 required of the mortgagor under said first mortgage; and any  
25 payment so made, together with the cost of such performance  
26 shall be added to and become a part of the debt secured by this  
27 mortgage, and shall bear interest at the same rate as the note  
28 secured hereby without waiver, however, of any right arising to

1 the mortgagee for breach of covenant. And this mortgage may be  
2 foreclosed for principal, interest and all sums paid by the mort-  
3 gagee at any time while the mortgagor neglects to repay any sums  
4 so paid by the mortgagee. In the event of any suit or action  
5 being instituted to foreclose this mortgage, the mortgagor agrees  
6 to pay all reasonable costs incurred by the mortgagee for title  
7 reports and title search, all statutory costs and disbursements  
8 and such further sum as the trial court may adjudge reasonable  
9 as plaintiff's attorney's fees in such suit or action, and if an  
10 appeal is taken from any judgement or decree entered therein,  
11 mortgagor further promises to pay such sum as the appellate court  
12 shall adjudge reasonable as plaintiff's attorney's fees on such  
13 appeal, all such sums to be secured by the lien of this mortgage  
14 and included in the decree of foreclosure.

15 Each and all of the covenants and agreements herein  
16 contained shall apply to and bind the heirs, executors, administ-  
17 rators and assigns of said mortgagor and of said mortgagee re-  
18 spectively.

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

25 In construing this mortgage, it is understood that the  
26 mortgagor or mortgagee may be more than one person; that if the  
27 context so requires, the singular pronoun shall be taken to mean  
28



1 and include the plural, the masculine, the feminine and the  
 2 neuter, and that generally all gramatical changes shall be made,  
 3 assumed and implied to make the provisions hereof apply equally  
 4 to corporations and to individuals.

5 IN WITNESS WHEREOF, said mortgagor has hereunto set his  
 6 hand the day and year first above-written.

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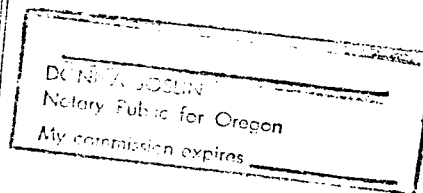
*Albert W. Schmeck*  
 ALBERT W. SCHMECK

*Vada H. Schmeck*  
 VADA H. SCHMECK

13 STATE OF OREGON, )  
 14 County of Klamath ) ss.

15 BE IT REMEMBERED, That on this 25th day of April  
 16 1978, before me, the undersigned, a notary public in and for  
 17 said county and state, personally appeared the within named  
 18 ALBERT W. SCHMECK and VADA H. SCHMECK, husband and wife, known  
 19 to me to be the identical individuals described in and who  
 20 executed the within instrument and acknowledged to me that they  
 21 executed the same freely and voluntarily.

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



*Donna A. Joslin*  
 NOTARY PUBLIC FOR OREGON  
 My Commission Expires: 1-23-82

*Return to KCTC*

HENDERSON  
 & MOLATORE  
 ATTORNEYS AT LAW  
 420 MAIN STREET  
 KLAMATH FALLS,

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STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 26th day of  
April A.D., 19 78 at 3:46 o'clock P M., and duly recorded in Vol M78  
 of Mortgages on Page 8263.

FEE \$21.00

WM. D. MILNE, County Clerk  
 By *Wm. D. Milne* Deputy