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## MORTGAGE

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THIS INDENTURE, made this 11 day of August, 19 78 between Delbert M. Powell and Varchin C. Powell, Husband and Wife, herein called "Mortgagor", and WESTERN BANK, in Oregon banking corporation, herein called "Mortgagee".

## WITNESSETH:

For value received by the Mortgagee from the Mortgagor, the Mortgagor does hereby grant, bargain, mortgage and convey unto the Mortgagee all the following described property situated in Klamath County, Oregon, to-wit:

A Tract of Land, being a portion of that parcel of land conveyed in Deed Volume 362, page 471, Records of Klamath County, Oregon, and situated in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 36, Township 37 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point from which the Southwest corner of SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 36, bears West 66.5 feet and South 890 feet, said point being on the North line of said Deed Volume and page; thence East along said North line 208.7 feet to the Northeast corner of said Deed Volume and page; thence South along the East line of said Deed Volume and page and parallel to the West line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ , 208.7 feet; thence West 203.37 feet; thence North parallel to said West line of SE $\frac{1}{4}$ SE $\frac{1}{4}$ , 203.7 feet to the point of beginning.

Together with the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in anywise appertaining, including but not limited to roads and easements used in connection with the premises; also, all fixtures, buildings and parts of buildings situated upon said property, including but not limited to electric wiring and fixtures; furnace and heating system, water heaters, fuel storage receptacles; plumbing, ventilating, water and irrigating systems; screens, doors; window shades and blinds, shutters, radiators, built-in, freestanding and floor coverings, built-in stoves, ovens, garbage disposals, air conditions, refrigerators, freezers, dishwashers, and all other fixtures now or hereafter installed in or on the premises; and any shrubbery, flora or timber now growing or hereafter planted or growing thereon; and any and all replacements of any one or more of the foregoing items, in whole or in part, all of which are hereby declared to be appurtenant to the land; and all the rents, issues and profits arising from the mortgaged property.

I DO HEREBY AND DO TRUST the same unto the Mortgagee, its successors and assigns forever.

The Mortgagee does hereby covenant to and with the Mortgagor that the Mortgagor is lawfully seized in fee simple of the said real property, that it is the lawful owner of all items of property described hereinabove, that the said property is free from encumbrances of every kind and nature, and that it will warrant and interest defend the same against the lawful claims and demands of all persons whatsoever.

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained, to be by the Mortgagor kept and performed and the payment of the sum of \$ 50,000 and interest thereon in accordance with the terms of a certain promissory note executed by Western Bank Reno Branch

dated 8-13, 19 78, payable to the order of the Mortgagee in installments of not less than \$ 1,322.84 each month, interest on the 15th day of each month commencing 10-15, 19 78, until 9-15, 19 83 when the balance then remaining unpaid shall be paid.

This Mortgage is also given as security for the payment of any and all other indebtednesses, obligations or liabilities of the Mortgagor, his the Mortgagee now existing or hereafter arising, matured or to mature, absolute or contingent and wherever payable, including but not limited to such as may arise from endorsements, guarantees, acceptances, bills of exchange, promissory notes, or other paper discounted by the Mortgagee or held by the Mortgagee, or taken as security for any loans or advances of any kind, sort or description whatsoever.

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

1. That Mortgagor will pay, when due, the indebtedness hereby secured, with interest as prescribed by said note, and will pay, when due, all other sums secured hereby, and all taxes, liens and utility charges upon said premises, or for services furnished thereon. In addition, then to, he will pay, at the time of payment of each installment of principal and interest, such amount as Mortgagee shall estimate to be sufficient to produce, at least one month prior to the time when payment thereof shall become due, the amount of (a) taxes, assessments and other governmental rates and charges apportioned to said premises (herein all called "taxes") and (b) premiums upon insurance against loss or damage to said premises (said amounts being referred to hereinafter as "loan trust funds"). If the sums so paid shall be less than sufficient for said purposes, Mortgagee will also pay, upon demand, such additional sum as Mortgagee shall deem necessary therefor. If Mortgagee desires a "building" plan of insurance which includes coverage in addition to that required under this mortgage, Mortgagee may, at its option, establish and administer a reserve for that purpose. If the package plan reserve is not sufficient to pay the renewal premiums on a package plan policy, then Mortgagee may use such reserve to pay premiums on a policy covering only risks required to be insured against under this mortgage and allow the package plan policy to lapse. Mortgagee shall, upon the written direction of Mortgagee, and may, without such direction, apply sums paid by Mortgagee and held by Mortgagee to the purpose intended; but the receipt of such sums shall not, in the absence of such direction, impose any duty upon Mortgagee to disburse the same or relieve Mortgagee from his obligation to pay said obligations or to keep the premises insured. Mortgagee may, from time to time, establish reasonable service charges for the collection and disbursement of premiums on package-type insurance policies. Mortgagee shall not, whether or not service charges are imposed, be subject to any liability for failure to transmit any premiums to any insurer or by reason of any loss growing out of any defect in any insurance policy. At Mortgagee's option, Mortgagee may apply all loan trust funds directly to the payment of the principal balance then unpaid on the indebtedness secured hereby; if Mortgagee elects so to do, Mortgagee is authorized to pay taxes, insurance premiums on the mortgaged property, and all other charges which would otherwise be payable from the loan trust funds, when the same become due and payable, and Mortgagee may then add the amount of any such payment to the principal balance then unpaid on the indebtedness secured hereby, such such payment to bear interest as provided in the promissory note mentioned hereinabove.

2. That Mortgagee will not commit or permit stop or waste of the said premises, or any part thereof; that Mortgagee will keep the real and personal property hereinabove described in good order and repair and in tenantable condition; that Mortgagee will promptly comply with any and all municipal and governmental codes and regulations with reference thereto; that Mortgagee will not cause or permit the cutting or removal of any timber within the boundaries of said premises, that if any of the said property be damaged or destroyed by any cause, Mortgagee will immediately reconstruct or replace the same so that, when completed, it shall be worth not less than the value thereof at the time of such loss or damage; provided, that if such loss or damage shall be caused by a hazard covered by insurance payable on Mortgagee, the obligation of the Mortgagee to repair or reconstruct shall not be in breach of the Mortgagee's obligation to reconstruct or replace the same at the expense of such insurances or repairs.

3. That he will, and he shall cause to be done, keep the building or buildings now or hereafter upon said premises together with all personal property covered by the loan trust funds,

insured against loss by fire and against loss by such other hazards as the Mortgagee may from time to time require, in one or more insurance companies satisfactory to or designated by the Mortgagee in an aggregate amount not less than the amount of the indebtedness hereby secured (unless the full insurable value of such building or buildings is less than the amount hereby secured, in which event the Mortgagor shall insure to the amount of the full insurable value); that all policies of insurance upon said premises, including policies in excess of the amount hereinabove mentioned and policies against other hazards than those required, shall contain such provisions as the Mortgagee shall require and shall provide, in such form as the Mortgagee may prescribe, that loss shall be payable to the Mortgagee; that all such policies and receipts showing full payment of premiums therefor shall be delivered to and retained by the Mortgagee during the existence of this mortgage; that at least 5 days prior to the expiration of any policy or policies he will deliver to the Mortgagee satisfactory renewals thereof together with premium receipts in full; that if any policy or policies shall impose any condition upon the liability of the insurer or shall contain any "average clause" or other provision by which the insurer may be liable for less than the full amount of the loss sustained, he will, as often as the Mortgagee may require, provide the Mortgagee with all such evidence as it may request concerning the performance of such condition or the existence of any facts or the value of the property insured and, if it shall appear to the Mortgagee that the insurance is prejudiced by the acts or omissions of the Mortgagor or that the coverage is inadequate, the Mortgagor will do such acts and things and obtain such further insurance as the Mortgagee may require; that the Mortgagee may, at its option, require the proceeds of any insurance policies upon the said premises to be applied to the payment of the indebtedness hereby secured or to be used for the repair or reconstruction of the property damaged or destroyed.

4. That he will execute or procure such further assurance of his title to the said property as may be requested by the Mortgagee.

5. That in case the Mortgagor shall fail, neglect or refuse to do or perform any of the acts or things herein required to be done or performed, the Mortgagee may, at its option, but without any obligation on its part so to do, and without waiver of such default, procure any insurance, pay any taxes or liens or utility charges, make any repair, or do any other of the things required, and any expenses so incurred and any sums so paid shall bear interest at 8% per annum, or at the rate of interest set forth in the note mentioned above, whichever is greater, and shall be secured hereby.

6. That he will not, without the prior written consent of Mortgagee, transfer his interest in said premises or any part thereof, whether or not the transferee assumes or agrees to pay the indebtedness hereby secured. Upon any application for Mortgagee's consent to such a transfer, Mortgagee may require from the transferee such information as would normally be required if the transferee were a new loan applicant. Mortgagee shall not unreasonably withhold its consent. As a condition of its consent to any transfer, Mortgagee may, in its discretion, impose a service charge not exceeding one percent of the original amount of the indebtedness hereby secured and may increase the interest rate on the indebtedness hereby secured by not more than one percent per annum.

7. That, if any default be made in the payment of the principal or interest of the indebtedness hereby secured or in the performance of any of the covenants or agreements of this mortgage, the Mortgagee may, at its option, without notice, declare the entire sum secured by this mortgage due and payable and foreclose this mortgage.

8. That, in the event of the institution of any suit or action to foreclose this mortgage, the Mortgagor will pay such sum as the trial court and any appellate court may adjudge reasonable as attorney's fees in connection therewith and such further sums as the Mortgagee shall have paid or incurred for costs and disbursements in such suit or action, including attorneys' fees and title searches or examination fees in connection therewith, whether or not final judgment or decree thereon be entered and all such sums are secured hereby and shall bear interest from the date paid or incurred by Mortgagee or from the date of judgment, whichever occurs first, at the rate set forth in the promissory note mentioned above; that in any such suit, the court may, upon application of the plaintiff and without regard to the condition of the property or the adequacy of the security for this indebtedness hereby secured and without notice to the Mortgagor or any one else, appoint a receiver to take possession and care of all said mortgaged property and collect and receive any or all of the rents, issues and profits which had theretofore arisen or accrued or which may arise or accrue during the pendency of such suit; that any amount so received shall be applied toward the payment of the debt secured hereby, after first paying therefrom the charges and expenses of such receivership; but until a breach or default by the Mortgagor in one or more of his covenants or agreements herein contained, he may remain in possession of the mortgaged property and retain all rents actually paid to and received by him prior to such default.

9. The word "Mortgagor" and the language of this instru-

ment shall, where there is more than one mortgagor, be construed as plural and be binding jointly and severally upon all mortgagors and the word "Mortgagee" shall apply to any holder of this mortgage. Masculine pronouns include feminine and neuter. All of the covenants of the Mortgage shall be binding upon his heirs, executors, administrators, successors and assigns and inure to the benefit of the successors and assigns of the Mortgagee. 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, once or often, extend the time of payment or grant renewals of indebtedness hereby secured for any term, 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 primary liability of the Mortgagor for the payment of the indebtedness hereby secured. No condition of this mortgage shall be deemed waived unless the same be expressly waived in writing by the Mortgagee. Whenever any notice, demand, or request is required by the terms hereof or by any law now in existence or hereafter enacted, such notice, demand or request 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 actually furnished to the Mortgagee or at the mortgaged premises and deposited in any post office, station or letter box.

IN WITNESS WHEREOF, the Mortgagors, Delbert M. Powell have hereunto set their hands and seals Marchia C. Powell the day and year first hereinabove written.

Delbert M. Powell (SEAL)

Marchia C. Powell (SEAL)

Marchia C. Powell (SEAL)

(SEAL)

# STATE OF OREGON

County of Klamath

September 11, 1938 A.D. 1938

Personally appeared the above named Delbert M. Powell and Marchia C. Powell

Husband and Wife

and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:



William D. Milne  
Notary Public for Oregon.

My Commission Expires: 3-18-40

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 September A.D. 1938 at 9:42 o'clock A M., and duly recorded in Vol. M78 of Mortgages on Page 21254.

FEE \$9.00

WILL D. MILNE, County Clerk

By Rebecca M. Black

Deputy