

THIS MORTGAGE, Made this 18th day of July 19 79, by

J. K. DEVELOPMENT CO., an Oregon corporation,

hereinafter called "Mortgagor", to

JOE L. KELLER and ROSIE A. KELLER, husband and wife,

hereinafter called "Mortgagee";

W I T N E S S E T H:

That Mortgagor, for valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey, mortgage, and confirm unto Mortgagee, his heirs, executors, administrators, successors, and assigns, the property situate in the County of Klamath, State of Oregon described in Exhibit "A" attached hereto and thereby made a part hereof as though fully set forth hereat.

TOGETHER WITH:

1. The tenements, hereditaments, and appurtenances now or hereafter used or usable in connection with the above described real property;
2. All leases, permits, licenses, privileges, rights-of-way, and easements, written or otherwise, now held by mortgagor, or hereafter issued, extended or renewed;
3. All improvements now on or hereafter placed upon said real property during the term of this mortgage, including all fixtures, now or hereafter a part of, or used in connection with, said improvements.
4. All rights to the use of water for irrigation of said real property and for domestic use thereon to which said real property is now or may hereafter become entitled, or which may hereafter be used on said real property, however the same may be evidenced, together with all shares of stock or shares of water, if any, in any ditch or irrigation company which in any manner entitles the legal or equitable owner of said real property to water for irrigation or domestic purposes upon said real property.

THIS MORTGAGE IS GIVEN TO SECURE THE FOLLOWING:

1. Performance by Mortgagor of the covenants and agreements of Mortgagor contained in this mortgage instrument;
 2. The payment of that certain promissory note of even date in the principal sum of \$ 330,000.00, with interest as provided in said note, payable to the order of Mortgagee; and,
 3. Payment of any sum or sums advanced, incurred, or paid by Mortgagee, to, for, or on account of Mortgagor as provided in this mortgage instrument.
- TO HAVE AND TO HOLD the said mortgaged property to the said Mortgagee, his heirs, executors, administrators, successors and assigns until the obligations secured by this mortgage instrument have been fully discharged.

MORTGAGOR COVENANTS AND AGREES:

1. Warranty of Title: That he is lawfully seized of the above described real property in fee simple, has good right and lawful authority to mortgage the same, and that said real property is free from all encumbrances, except as above set forth, and that Mortgagor will warrant and defend the same forever against the lawful claims and demands of all persons whomsoever, and this covenant shall not be extinguished by any foreclosure of this mortgage instrument, but shall run with the land.
2. Waiver of Homestead and Exemption: That he does hereby release and waive all rights under and by virtue of any homestead or exemption laws now in force, or which may hereafter become law.
3. Prompt Performance and Payment: To perform all obligations and pay all sums of money (both principal and interest at the rates specified in the note or in this mortgage instrument) secured hereby promptly when due.
4. Protection of Security: To keep the mortgaged property, including, but not limited to, buildings, structures, fixtures, permanent plantings, trees, and orchards, if any be in existence on the date hereof, in good condition and repair, not to remove or demolish, nor permit the removal or demolition of any thereof; to comply with all laws, rules and regulations made by any duly constituted authority applicable to the mortgaged property; to keep the mortgaged property free from liens of every kind; not to commit nor permit any waste to or on the mortgaged property; and not to permit nor to commit anything which shall impair the security created by this mortgage instrument.
5. Payment of Taxes and Assessments: To pay regularly and seasonably, and before the same shall become delinquent, all taxes, assessments, and charges of whatever nature (including additional charges by reason of change of use) levied and assessed against the mortgaged property, or any part thereof.
6. Fire Insurance: To keep buildings and improvements now on, or hereafter placed upon, the above

1 described real property insured against loss by fire or other casualty in an amount not less than maximum
 2 insurable value as determined by the insurance carrier and shall obtain, at his own expense, an insurance
 3 endorsement thereon providing for loss payable to Mortgagee and Mortgagor as their respective interests
 4 may appear. The policy or policies of insurance shall be delivered to Mortgagee, or in lieu thereof, a
 5 certificate of such insurance may be provided by Mortgagor and delivered to Mortgagee. If a loss should
 6 occur for which insurance proceeds shall become payable, the Mortgagor may elect to either rebuild or
 7 repair the portion of the building or improvements so destroyed, or apply the proceeds to payment of the
 8 unpaid balance of principal and interest secured by this mortgage instrument. If the Mortgagor elects to
 9 rebuild, he shall sign such document as may be required by Mortgagee to guarantee the application of the
 10 insurance proceeds to the cost of such building or repair. If the Mortgagor elects to apply the insurance
 11 proceeds toward payment of the obligation secured by this mortgage instrument, any such sums so received
 12 by Mortgagee shall not be in lieu of, nor credited to, the next regular installment, but shall be applied by
 13 Mortgagee first to interest accrued to the date of such payment and then toward the reduction of
 14 principal.

15 7. Condemnation: In the event any governmental agency or entity having the power of eminent
 16 domain acquires by eminent domain, or by negotiated sale in lieu of eminent domain, all, or any portion,
 17 of the real property described in this mortgage instrument, Mortgagee may require Mortgagor to apply all
 18 proceeds received by Mortgagor from such acquisition (remaining after payment by Mortgagor of attorney's
 19 fees, appraiser's fees, and related necessary and reasonable costs in connection with securing said proceeds),
 20 which proceeds are hereinafter called "net proceeds", toward the payment of the sums secured by this
 21 mortgage instrument. Upon receipt of said net proceeds, Mortgagor shall notify Mortgagee of the amount
 22 of said net proceeds and Mortgagee shall, within ten (10) days after such notification, notify Mortgagor in
 23 if Mortgagee elects to have said net proceeds applied toward payment of the sums secured by this mortgage
 24 instrument. If Mortgagee fails to so notify Mortgagor of such election, Mortgagee shall conclusively be
 25 deemed to have elected not to require Mortgagor to apply said net proceeds toward the sums secured by
 26 this mortgage instrument. If Mortgagee elects to have said net proceeds applied toward payment toward the
 27 sums secured by this mortgage instrument, the amount to be received by Mortgagee shall not exceed the
 28 total of the principal secured by this mortgage instrument, plus accrued interest thereon to the date of re-
 29 ceipt thereof by Mortgagee. Regardless of whether Mortgagee elects to have said net proceeds applied to the
 30 sums secured by this mortgage instrument, Mortgagee shall release from the lien of this mortgage instrument
 31 so much of the real property above described acquired by such governmental agency or entity by eminent
 32 domain, but Mortgagee shall not be required to partially release more property than that which is acquired
 33 by such governmental agency or entity. Mortgagee shall not be obligated to participate in any negotiations
 34 with such governmental agency or entity.

35 8. Expenses Incurred by Mortgagee to Protect Security: If Mortgagor fails to pay or discharge any
 36 taxes, assessments, liens, encumbrances, or charges to be paid by Mortgagor as provided in this mortgage
 37 instrument, Mortgagee, at his option and without waiver of default or breach of Mortgagor, and without
 38 being obligated to do so, may pay or discharge all or any part thereof. Mortgagee may appear in or
 39 defend any action or proceeding at law, in equity, or in bankruptcy, affecting in any way the security
 40 hereof, and, in such event, Mortgagee shall be allowed and paid, and Mortgagor hereby agrees to pay, all
 41 costs, charges and expenses, including costs of evidence of title or validity and priority of the security
 42 created by this mortgage instrument and reasonable attorney's fees to be awarded by the court, at trial or
 43 on appeal, incurred by Mortgagee in any such action or proceeding in which Mortgagee may appear. All
 44 sums so paid or advanced or incurred by Mortgagee shall become repayable by Mortgagor, together with
 45 interest at the rate of six (6%) percent per annum, upon demand.

46 9. Time Is Material and Of the Essence: Time is material and of the essence hereof; in the event of
 47 default of the payment of the indebtedness evidenced by the note referred to in this mortgage instrument,
 48 or any installment of the principal sum or interest thereon, or any part thereof, or in the repayment of
 49 any disbursement authorized by the terms of this mortgage and actually made by Mortgagee, or in the
 50 repayment of any expense or obligation payable by the Mortgagor but paid by the Mortgagee, as provided
 51 in this mortgage instrument, or in the event of the breach of any of the covenants or agreements by
 52 Mortgagor, Mortgagee may at once proceed to foreclose this mortgage for the amount due, or in the case
 53 of default as aforesaid, or in the event of the violation, non-performance or breach of any of the cove-
 54 nants, conditions, agreements, or warranties herein or in the promissory note secured by this mortgage, or
 55 in case of the actual or threatened demolition or removal of any building, structure, improvement,
 56 permanent planting, tree or orchards on or to be erected on the mortgaged property by Mortgagor without
 57 the written permission of Mortgagee, the entire principal sum of the promissory note hereby secured and
 58 the whole amount of all indebtedness owing by or chargeable to Mortgagor under the provisions of this
 59 mortgage or intended to be secured hereby shall, at the election of Mortgagee, become immediately due and
 60 payable without notice although the time expressed in said note for the payment thereof shall not have
 61 arrived and suit may immediately be brought without notice to Mortgagor, and a decree be had to sell the
 62 mortgaged property, or any part or parts thereof, either together or in parcels, with all and every of the
 63 appurtenances, or any part thereof, in the manner prescribed by law, and out of the monies arising from
 64 said sale to repay said indebtedness, including both principal and interest, together with the costs and
 65 charges of making such sale and suit for foreclosure and also the amounts of all sums advanced or paid
 66 by Mortgagee to or for the account of Mortgagor, with interest thereon as herein provided, including such

GIACOMINI, JONES & ZAMSKY, ATTORNEYS AT LAW A PROFESSIONAL CORPORATION, KLAMATH FALLS, OREGON

1 payments of liens, taxes, or other encumbrances as may have been made by Mortgagee by reason of provi-
2 sions herein given, and inclusive of interest thereon, and the overplus, if any there be, shall be paid by
3 the party making such sale, on demand, to Mortgagor.
4 10. Costs of Title in the Event of Foreclosure: Upon the commencement of any suit to collect the
5 indebtedness or disbursements, secured hereby, or any part hereof, or to enforce any provisions of this
6 mortgage instrument, by foreclosure or otherwise, there shall become due, and Mortgagor agrees to pay to
7 Mortgagee, in addition to all statutory costs and disbursements, any amount Mortgagee may incur or pay
8 for any title report, title search, insurance of title, or other evidence of title subsequent to the date of
9 this mortgage instrument on any of the real property above described in this mortgage instrument and this
10 mortgage instrument shall be security for the payment thereof.
11 11. Attorney Fees to Prevailing Party: In the event any suit or action is instituted to collect the
12 indebtedness or disbursements secured hereby, or any part thereof, or to enforce any provision of this
13 mortgage instrument by foreclosure, or otherwise, the prevailing party, at trial or on appeal, shall be
14 entitled to such reasonable attorney's fees as shall be fixed by the court having jurisdiction of the case,
15 in addition to statutory costs and disbursements.
16 12. Waiver: No waiver by Mortgagee of any breach of any covenant or agreement of this mortgage
17 instrument by Mortgagor shall be construed as a continuing waiver of any subsequent breach of such
18 covenant, nor as a waiver of any breach of any other covenant, nor as a waiver of the covenant itself, nor
19 as a waiver of this provision.
20 13. Binding Effect of Mortgage Instrument: This mortgage instrument contains a full understanding
21 of the Mortgagor and the Mortgagee with respect to the provisions set forth herein and no modification
22 of this mortgage instrument shall be given effect unless the same is in writing, subscribed by the
23 Mortgagor and the Mortgagee (or their respective successor in interest) and made of record in the same
24 manner as this mortgage instrument is made of record.
25 14. Notices: Any notice or notices required to be given by either Mortgagor to Mortgagee or Mort-
26 gagee to Mortgagor pursuant to any provision of this mortgage instrument shall be in writing, and shall be
27 deemed given when the same is deposited in the United States mail as registered mail, postage prepaid,
28 addressed to the party to whom notice is to be given at the last address of such party known by the
29 party giving such notice. In lieu of mailing such notice, such notice may be delivered in person to the
30 party to whom notice is to be given and execution by the person to whom notice is to be given of a
31 receipt of such notice shall be conclusive evidence of delivery of such notice.
32 15. Binding Effect and Construction of Mortgage Instrument: This mortgage instrument shall bind
33 and inure to the benefit of, as the circumstances may require, the parties hereto, and their respective
34 heirs, executors, administrators, successors, and assigns. In construing this mortgage instrument, the singular
35 shall include both the singular and the plural and the masculine the masculine, the feminine, and the
36 neuter. The headings contained in this mortgage instrument are for convenience only and are not to be
37 construed as part of this mortgage instrument. To the extent that any exhibit is attached to this
38 mortgage instrument, the same is hereby incorporated into this mortgage instrument as though fully set
39 forth at the place in this mortgage instrument at which reference to said exhibit is made.
40 16. Release and Subordination: Mortgagee agrees to join in the execution of any plat
41 and hereby acknowledges that by so doing he will be dedicating streets and ways, utility
42 easements, and similar public areas to the public, for which Mortgagee is entitled to no
43 additional compensation. For the payment to Mortgagee of the sum of \$6,000.00 for each lot,
44 Mortgagee shall release from the lien of this mortgage any such lot for which payment is
45 made and to which the lot is designated for release by Mortgagor. Such payments shall be
46 applied to upcoming principal payments as the payments fall due. In addition, for each
47 \$6,000.00 multiple, in that full sum, contained in any annual payment required to be made
48 hereunder, Mortgagee shall release to Mortgagor the lots designated in a written request
49 therefore executed by Mortgagor. Mortgagee agrees to subordinate to any improvement loan
50 requested by Mortgagor so long as said loan represents expenditures related to streets, sew-
51 ers, water, power, telephone, cable television, and similar matters.

J. K. DEVELOPMENT CO., an Oregon corporation
By: Joe L. Keller
JOE L. KELLER, President
By: Rosie A. Keller
ROSIE A. KELLER, Secretary

(SEAL)

STATE OF OREGON)
County of Klamath) ss:

Personally appeared before me JOE L. KELLER and ROSIE A. KELLER who, being duly sworn,
each for himself and not one for the other, did say that the former is president and that the
latter is secretary of J.K. DEVELOPMENT CO., a corporation, and that the seal affixed to the
foregoing instrument is the corporate seal of said corporation and that said instrument was
signed and sealed in behalf of said corporation by authority of its board of directors; and
each of them acknowledged said instrument to be its voluntary act and deed.

DATED: July 18, 1979.

Kirstine L. Prock
NOTARY PUBLIC FOR OREGON
My Commission Expires: 12/16/80

(SEAL)
KIRSTINE L. PROCK
NOTARY PUBLIC — OREGON
My Commission Expires

23311

EXHIBIT "A"

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, Block 19; Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, Block 20; Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, Block 21; Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, Block 22; Lots 1 and 2, Block 23; Lots 1 and 2, Block 24; Lots 1 and 2, Block 25,
 NINTH ADDITION to SUNSET VILLAGE in Klamath County, Oregon.

SUBJECT TO all existing encumbrances of record as of the date hereof.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Giacomini, Jones & Zamsky

on the 2nd day of October A. D. 1979 at 2:27 o'clock P. M., and

fully recorded in Vol. M79, of Mortgages on Page 23308

Wm D. MILNE, County Clerk

By Bernetha Helich

Fee \$14.00

When recorded mail to:

GIACOMINI, JONES & ZAMSKY
 ATTORNEYS AT LAW
 A PROFESSIONAL CORPORATION
 635 MAIN STREET
 KLAMATH FALLS, OREGON