

78447

THIS MORTGAGE is made this 19<sup>th</sup> day of December, 1979, by KENNETH RUTLEDGE nad JUDY A. RUTLEDGE (Rutledge), Mortgagors, and JAMES ADAIR (Adair), Mortgagee.

1. Property: Rutledge hereby mortgages to Adair the following described real property situated in Klamath County, Oregon (hereafter "the Property"), including all buildings and improvements thereon:

Lot 12, Block 13, Eighth Addition to Sunset Village according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

2. Promissory Note: This Mortgage is intended to secure the payment of a promissory note, a true copy of which is attached hereto as Exhibit "A". The final payment of principal and interest on said note, if not sooner paid, is due and payable April 1, 1980.

3. Prior Deed of Trust: Rutledge warrants that he has a valid, unencumbered title to the Property subject to a Deed of Trust made by Kenneth Rutledge and Judy A. Rutledge, husband and wife, Grantors, to William Ganong, Jr. as Trustee and First Federal Savings and Loan as beneficiary, dated January 7, 1977 and recorded January 10, 1977 in the mortgage records of Klamath County in book M-78 at page 448. Said Deed of Trust is in the amount of \$41,000 on which a balance of \$ , is owing as of December 19, 1979.

4. Covenants of Mortgagors: Rutledge promises that he will:

- a) Pay the note secured by this mortgage according to its terms;
- b) Pay all taxes, assessments and other charges which may be levied or assessed against the Property when due;
- c) Pay the note secured by the Deed of Trust described in Paragraph 3 according to its terms and promptly discharge any liens against the Property which are superior to the lien of this Mortgage. In the event that Rutledge fails to pay any sum due upon any such prior lien promptly when due, Adair may pay the same and Rutledge shall reimburse Adair the amount thereof upon demand. As an alternative Adair may add the amount thereof to the debt secured by this Mortgage and the same shall bear interest at the rate specified in the note. However, the exercise of either of these options by Adair shall not be deemed a waiver of any right arising by reason of Rutledge's breach of this Mortgage.
- d) Keep the buildings and other improvements now existing or which may hereafter be placed on the Property insured against fire and other casualties with extended coverage endorsements. The policy shall be written to the full replacement value with loss payable to Adair and Rutledge as their interest may appear. Certificates evidencing the policies shall be delivered to Adair within

10 days of the date hereof and shall contain a stipulation providing that coverage will not be canceled or diminished with a minimum of 10 days written notice to Adair.

e) Keep the building and improvements on the Property in good repair and not commit or suffer any waste thereof.

5. Default: Time is of the essence of this Mortgage. In the event Rutledge shall default in the payment of any sum due under the terms of the note or in the performance of any covenant of this Mortgage, Adair shall give Rutledge written notice by certified mail specifying said default. If, within 10 days after receipt of such notice, Rutledge fails to make said payment or perform or commence performance of such covenant, Adair shall have the right to declare the entire unpaid balance of the note immediately due and payable and pursue all available remedies provided by law.

6. Costs and Attorney Fees: In the event suit or action is instituted to foreclose this Mortgage, Rutledge agrees to pay such sum as the court may adjudge reasonable as attorney fees at trial or on appeal of such suit or action in addition to all reasonable costs incurred by Adair for title search and reports and all other sums provided by law.

7. Eminent Domain: In the event that all or any portion of said property shall be taken by eminent domain, Adair shall have the right to require that all or any portion of the monies payable as compensation for such taking, in excess of the

amount required to pay reasonable costs and attorney fees incurred by Rutledge in such proceedings, shall be paid to Adair and applied first to any costs and expenses necessarily paid or incurred by Adair in such proceedings. The balance shall be applied against the payments last becoming due on the note.

8. Insurance Proceeds: If the Property is damaged because of fire or other risk covered by insurance, Rutledge shall apply the proceeds of said insurance against the cost of repair. Any amount not required for said purpose shall be paid to Adair and applied against the payments last becoming due on the note. If said insurance proceeds shall be insufficient for such repairs, Rutledge shall pay the difference. If damage to the improvements is so extensive as to constitute total destruction so that repair is not feasible, the insurance proceeds shall be paid to Adair and applied against the payments last becoming due on the note, and any excess over the balance thereof shall be paid to Rutledge.

In the event that Rutledge shall fail to file any proof of loss or to endorse any check, draft or warrant payable to Rutledge arising from such loss, Rutledge hereby names and constitutes Adair their attorney-in-fact to make such proof of loss and to endorse such check, draft or warrant and apply the proceeds as provided herein.

9. Waiver: Rutledge agrees that failure of Adair at any time to require performance by Rutledge of any provision of this Mortgage or the note it secures, shall in no way affect

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Adair's right hereunder to enforce the same, nor shall any waiver by Adair of any breach of any provision hereof be held to be a waiver of the provision itself or any other provision.

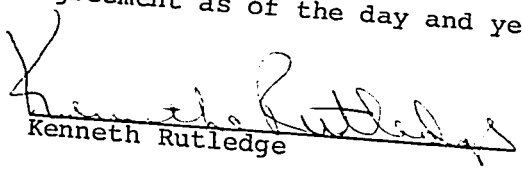
10. Benefit: All of the covenants and agreements herein shall apply to and bind the heirs, successors and assigns of Rutledge and Adair.

11. Notice: Any notice in connection with this Mortgage shall be in writing and shall be effective when actually delivered or when deposited in the mail, registered or certified, addressed to the parties at the addresses set forth below or such other addresses as either party may designate by written notice to the other:

James Adair  
2200 S. Sixth Street  
Klamath Falls, OR 97601

Kenneth and Judy Rutledge  
3842 La Marada Way  
Klamath Falls, OR 97601

IN WITNESS WHEREOF, Rutledge has signed this Mortgage Agreement as of the day and year first above written.

  
Kenneth Rutledge

  
Judy Rutledge

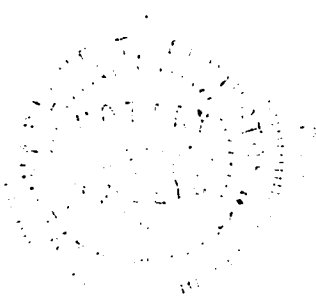
STATE OF OREGON       )  
                              ) ss.  
County of Klamath     )

On this 19th day of December 1979, before me appeared the within named KENNETH RUTLEDGE and JUDY RUTLEDGE, who are known to me to be the identical individuals described in and who executed the within instrument, and acknowledged to

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me that they executed the same freely and voluntarily.

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



*W. Darlene G. Aldington*  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 3-22-81

PROMISSORY NOTE

\$21,100

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December 19, 1979  
Klamath Falls, Oregon

FOR VALUE RECEIVED, KENNETH RUTLEDGE and JUDY RUTLEDGE, husband and wife (Rutledge), jointly and severally hereby promise to pay JAMES ADAIR (Adair) or his order, the principal sum of \$21,100 plus interest at the rate of six percent (6%) per annum due April 1, 1980.

This note may be prepaid in whole or part, at any time without penalty.

This note is secured by a second mortgage of even date herewith.

If this note is not paid when due and is placed in the hands of an attorney for collection, Rutledge promises and agrees to pay any fees incurred by Adair in enforcing Rutledge's obligations under this note, whether or not a suit or action is commenced. If a suit or action is filed, the amount of such attorney fees shall be fixed by the court or courts in which the suit or action, including any appeal therein, is decided.

Rutledge and all endorsers, sureties, and guarantors hereof, hereby jointly and severally waive presentment, demand for payment, notice of dishonor, notice of protest, and protest, and all other notices or demands in connection with the delivery, acceptance, performance, default, endorsement, or guarantee of this instrument.

Kenneth Rutledge  
Kenneth Rutledge

Judy Rutledge  
Judy Rutledge

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Transamerica Title Co.

this 20th day of December A. D. 19 79 at 3:55 o'clock P.M., and

fully recorded in Vol. M79, of Mortgages on Page 29255

Wm D. MILNE, County Clerk

By Donna A. Helich

TA

\$24.50

Page 7 - Second Mortgage on Real Property - Exhibit "A"