

38-21378

Vol ^M 80 Page 1052

MORTGAGE

This is a mortgage, made this 8TH day of MAY, 1980, by MOTY & VAN DYKE, INC., an Oregon corporation, hereinafter called the "Mortgagor" to WALTER E. HELLER WESTERN INCORPORATED, a California corporation, hereinafter called "Mortgagee".

For value received by the Mortgagor from the Mortgagee, the Mortgagor does hereby grant, bargain, sell, convey and mortgage to the Mortgagee, and Mortgagee's successors and/or assigns, all of the following described real property situated in Klamath County, Oregon, and described as follows:

[See attached Exhibit A]

Together with all and singular, the tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging or in anywise appertaining and which may hereafter thereto belong or appertain, and the rents, issues and profits therefrom and including but not limited to any party wall agreements, easements and rights of way, water rights and other rights and privileges owned or enjoyed by Mortgagor with respect to the mortgaged property or any part thereof and any and all fixtures upon the mortgaged property at the time of the execution of this mortgage or at any time now or hereafter thereon, together with all furniture, appliances, equipment and supplies used in the operation of the premises, and any replacements thereof.

This conveyance is intended as a mortgage to secure the payment of a promissory note dated the same date as this mortgage in the sum of \$100,000.00 executed by Mortgagor (a copy of which is attached hereto as Exhibit B and incorporated herein), and the payment of interest and the performance of the other terms and conditions therein. In addition to this mortgage and such note, the following agreements and arrangements with Mortgagee have been entered into:

Loan and Security Agreement dated the 8TH day of MAY, 1980.

Accounts Financing Security Agreement dated the 18TH day of MARCH, 1980.

Inventory Loan Security Agreement dated the 18TH day of MARCH, 1980.

80 MAY 17 PM 4 00

This Mortgage shall serve as additional collateral security to secure the performance of the above listed agreements and any and all obligations of Mortgagor to Mortgagee of any and every kind now or hereafter existing and whether direct, indirect, primary, secondary, fixed or contingent and any and all extensions or renewals of same. Also, Mortgagee may, if it desires, but it shall have no obligation to do so, make further advances to or for the account of Mortgagor under any of the foregoing agreements or otherwise, and this mortgage shall secure the faithful repayment thereof as agreed and the faithful performance of all of the covenants herein set forth. Payment of any portion of said principal sums, whether or not the remaining balances are secured in whole or in part by other collateral security given to Mortgagee, shall in no way affect the right of Mortgagee at its option to make further advances hereunder to be secured by the lien of this mortgage.

And the Mortgagor hereby covenants with the Mortgagee, that the Mortgagor is lawfully seized in fee simple of the mortgaged property; that the Mortgagor has good right and lawful authority to encumber or sell and convey the same; that the mortgaged property is free from all encumbrances, except as listed in Exhibit B and that the Mortgagee shall quietly enjoy and possess the same, and that the Mortgagor and the successors in interest and assigns of the Mortgagor will forever warrant and defend the title to the mortgaged property unto the Mortgagee against any and all lawful claims of all persons whomsoever. Any prior mortgage or trust deed listed on Exhibit B shall be kept current by Mortgagor and never permitted to be in default.

And the Mortgagor hereby agrees as follows:

1. To pay unto the Mortgagee, and Mortgagee's successors and/or assigns, the indebtedness evidenced by the note secured hereby, together with all installments of principal or interest payable by the terms thereof according to the tenor and effect of such note, and to pay all other sums that may now or hereafter be or become owing by Mortgagor to Mortgagee as provided for herein, together with interest thereon at the applicable rate of interest set forth in such note, in lawful money of the United States of America.

2. To keep the mortgaged property in good condition and repair; not to commit nor to permit any waste on the mortgaged property; to comply with all laws, rules and regulations made by

4800

governmental authority and applicable to the mortgaged property; to keep the mortgaged property free from statutory liens of every kind; and not to do nor permit to be done anything which shall impair the security created by this mortgage.

3. To pay, before they become delinquent, all taxes and assessments of every type or nature that may be levied, assessed or imposed upon the mortgaged property, or any part thereof, or upon this mortgage or the interest of the Mortgagee hereunder, or upon any note or indebtedness secured hereby, notwithstanding any law or any part of such taxes upon the Mortgagee, and upon any breach of this covenant or the passage of any applicable law imposing payment of the whole or any part of any of such taxes upon the Mortgagee and making this covenant legally inoperative, or upon the rendering of a decision by a court of competent jurisdiction that this covenant is legally inoperative, then in any such event the debt hereby secured, without any deduction, at the option of the Mortgagee shall become immediately due, payable and collectible, notwithstanding anything contained in this mortgage, the note secured hereby, or in any law heretofore or hereafter enacted.

4. To insure and keep insured the buildings, if any, now upon or hereafter erected upon the mortgaged property against loss by fire (with extended coverage) in such forms of insurance as may be required by the Mortgagee, in a sum which is not less than the balance due on the aforesaid note, in some responsible insurance company, or companies, to be selected by the Mortgagor and approved by the Mortgagee, and cause the policy or policies to be made payable in case of loss to the Mortgagee and Mortgagee's successors and/or assigns, and delivered as collateral and further security for the payment of the indebtedness hereby secured, it being agreed that in the event of loss or damage, if the loss is total, any insurance proceeds shall be applied by Mortgagee, at its option, either toward the cost of repairing and rebuilding or in the reduction of any indebtedness secured hereby. In the event of foreclosure of this mortgage or sale of the mortgaged property as herein provided, all interest of the Mortgagor in and to any insurance policies shall pass to the purchaser or grantee of said property.

5. In case of failure to pay the taxes and assessments referred to above before the same become delinquent or any interest or penalty which accrues thereon, or to obtain insurance

referred to above and deliver the policy or policies as aforesaid, or in case there exists or shall arise at any time any claim of a lien or encumbrance upon the mortgaged property, or any part thereof, which is prior to this mortgage, except as expressly stated herein, or in case there shall exist at any time during the continuance of this mortgage any statutory lien on the mortgaged property, or any part thereof, or in case Mortgagor fails to keep current any permitted prior mortgage or trust deed, the Mortgagee may pay such taxes and assessments, or obtain such insurance, or pay such claim, lien, encumbrance or statutory lien or mortgage or trust deed, and the sum or sums so advanced shall immediately be due and payable and shall, with interest thereon at the highest of interest per annum ever applicable to any obligation secured hereby, be deemed to be secured hereby.

6. The Mortgagee may appear in or defend any action or proceeding at law or in equity purporting to affect the security hereof, and in such event the Mortgagee shall be allowed and paid, and the Mortgagor hereby agrees to pay, all costs, charges and expenses, including which the Mortgagee may appear, including fees on appeals, if any.

7. In case of condemnation of the mortgaged property, or any part thereof, by paramount authority, any portion or all of any condemnation award to which the Mortgagor shall be entitled is hereby assigned by the Mortgagor to the Mortgagee, who is hereby authorized to demand, sue for, collect, receive and receipt for the same and apply the net proceeds of the same, less costs and expenses of any litigation, toward the payment of the indebtedness hereby secured.

8. In case of default in the payment of the indebtedness evidenced by the note secured hereby or any installment of the said principal sum and/or interest thereon, or any part thereof, or in the repayment of any disbursements authorized by the terms of this mortgage and actually made by the Mortgagee, or in case of default in the payment of any other indebtedness secured hereby, Mortgagee may at once proceed to foreclose this mortgage for the amount due; or in case of such default, or in the event of the violation, non-performance or breach of any of the covenants, conditions, agreements or warranties herein or in such note contained, or if the Mortgagor shall assign or attempt to assign the rents, issues or profits of any part thereof of the property mortgaged hereby without the written consent of the Mortgagee, or

in the case of the actual or threatened demolition or removal of any building or improvement on or to be erected upon the mortgaged property without the written consent of Mortgagee, the entire principal sum of such note hereby secured and the whole amount of all indebtedness owing by or chargeable to the Mortgagor under any provision of this mortgage or intended to be secured hereby shall, at the election of Mortgagee, become immediately due and payable without notice although the time expressed in such note for the payment thereof shall not have arrived and suit may immediately be brought without notice to Mortgagor, and a decree be had to sell the mortgaged property, or any part or parts thereof, either together or in parcels, with all of the appurtenances, or any part thereof, in the manner described by law.

9. In case suit or action is commenced to foreclose this mortgage the Court may, upon the motion of Mortgagee, appoint a receiver to collect the rents and profits arising out of the mortgaged property and to take possession, management and control of the mortgaged property during the pendency of such foreclosure or until payment of the debt hereby secured, and apply the said rents and profits to the payment of the amount due under this mortgage, first deducting all proper charges and expenses attending the execution of said Receivership.

10. Upon the commencement of any proceedings to collect the indebtedness or disbursements secured hereby, or any part thereof, by foreclosure of this mortgage or otherwise, the prevailing party shall be entitled to recover from the loser in addition to the costs and charges allowed by law, a reasonable sum as and for an attorneys' fee, including a reasonable amount as attorneys' fees incurred in any appeal of any judgment or decree in any such suit or action of any court, and it is agreed that this mortgage shall stand as security therefor. It is also agreed that Mortgagor will pay the cost of any title report or supplemental title reports obtained by Mortgagee in connection with any default of Mortgagor, and this mortgage shall secure payment thereof.

11. In the event of a sale of the mortgaged property, or any part or parts thereof, under and by virtue of the provisions of this mortgage, the purchaser or purchasers thereof shall have immediate and peaceable possession of the same and that if Mortgagor remains in possession after the effective date of such

sale, such possession shall be construed as a tenancy at sufferance only, giving unto the purchaser all remedies, by way of summary possession or otherwise, conferred by law in such case.

12. A waiver of any of the terms or provisions of this mortgage or of the note or other indebtedness secured hereby, shall not at any time thereafter be held or considered to be a waiver of the terms or provisions hereof, or of the note or other indebtedness secured hereby, and that the legal holder thereof may, at its option, extend the maturity of the same from time to time upon written agreement, executed by the Mortgagor or Mortgagor's grantees, assigns or legal representatives, for such further periods, at such rate of interest, and upon such conditions as may be then agreed upon, and no such extension agreement shall operate to impair the lien of this mortgage or release the Mortgagor from any liability hereunder or any maker, guarantor or endorser from personal liability thereon, and that a deficiency judgment may be entered against Mortgagor either jointly or severally in any action brought to foreclose this mortgage.

13. The invalidity or inapplicability of any one or more covenants, conditions, agreements, phrases, clauses, sentences or paragraphs of this mortgage shall not affect the remaining portions of the mortgage or any part thereof, and in such event this mortgage shall be construed as if such invalid or inapplicable covenants, conditions, agreements, phrases, clauses, sentences or paragraphs, if any, had not been inserted herein. The covenants herein contained shall bind, and the benefits and advantages hereof shall inure to successors and assigns of the parties hereto.

14. Mortgagee is taking other collateral security to secure the payment of the note referred to above and the other obligations secured hereby, and it is expressly agreed that Mortgagee may enforce said obligations and/or enforce its rights with respect to such other security by suit or suits to foreclose or otherwise at the same time as enforcing Mortgagee's rights hereunder, or independently hereof at Mortgagee's option, without any obligation to marshal assets or to look to any particular security in any order or priority of enforcement, and that all remedies mentioned or provided for herein or at law or equity are cumulative and in addition to whatever other rights Mortgagee may have by other agreement or otherwise. Upon any default on any

obligation secured hereby, Mortgagor may, at its option proceed directly to foreclose or otherwise enforce its rights hereunder without first proceeding against any surety, endorser, guarantor or other collateral.

15. Upon a full and complete performance of the covenants and agreements herein contained, this mortgage shall be null and void; otherwise it shall be and remain in full force and effect.

IN TESTIMONY WHEREOF, the Mortgagor has hereunto caused this instrument to be executed the day and year first above written.

By G. R. Moty for

By G. R. Hoffman Sec.

STATE OF OREGON)

County of Klamath) ss.

This certifies that on this 8th day of May, 1980, before me, the undersigned, a notary public in and for said county and state, personally appeared Gilbert R. Moty and Philip C. Hoffman, both to me personally known, who being duly sworn, did say that the former is the president and the latter is the secretary of Moty & Van Dyke, Inc., the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and they acknowledged said instrument to be the free act and deed of said corporation.

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

Loyal L. Garboden
Notary Public for Oregon
My Commission Expires: _____

My Commission Expires April 8, 1984

EXHIBIT A

PARCEL 1

Lots 1 and 2, Block 77 and a strip of land 0.25 feet in width, lying adjacent to and Northwesterly of the Northwesterly line of Lots 1 and 2, Block 77, and a strip of land 0.25 feet in width lying adjacent to and Southeasterly of the Southeasterly line of Lots 1 and 2, Block 77, KLAMATH ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon.

PARCEL 2

Lots 6, 7, 8, 9 and 10, Block 77, and Lots 4 and 5, Block 83, KLAMATH ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon.

PARCEL 3

Lot 3 and the Easterly 6 inches of Lot 4, Block 77 and a strip of land 0.25 feet in width, lying adjacent to and Northwesterly of the Northwesterly line of Lot 3 and the Easterly 6 inches of Lot 4, Block 77, and a strip of land 0.25 feet in width lying adjacent to and Southeasterly of the Southeasterly line of Lot 3 and the Easterly 6 inches of Lot 4, Block 77 of KLAMATH ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon.

Subject to:

1. Regulations, including levies, liens and utility assessments of the City of Klamath Falls.

2. Restrictions, but omitting restrictions, if any, based on race, color, religion or national origin, as shown on the recorded plat of Klamath Addition.

3. Mortgage, including the terms and provisions thereof, with interest thereon and such future advances as may be provided therein, given to secure the payment of \$660,000.00

Dated: July 6, 1977

Recorded: July 11, 1977

Book/Page: M-77, 12213

Mortgagor: Moty & Van Dyke Inc.

Mortgagee: First National Bank of Oregon

4. Taxes for the year 1979-80 payable in the amount of \$2,199.95, plus interest. (CODE 1 MAP 3819 TL 27)

9890

Taxes for the year 1979-80 payable in the amount of \$634.80, plus interest. (CODE 1 MAP 3819 TL 28)

Taxes for the year 1979-80 payable in the amount of \$1,023.38, plus interest. (CODE 1 MAP 3819 TL 31)

Taxes for the year 1979-80 payable in the amount of \$1,106.79, plus interest. (CODE 1 MAP 3819 TL 32)

Taxes for the year 1979-80 payable in the amount of \$433.32, plus interest. (CODE 1 MAP 3819 TL 33)

Taxes for the year 1979-80 payable in the amount of \$433.32, plus interest. (CODE 1 MAP 3819 TL 34)

Taxes for the year 1979-80 payable in the amount of \$1,449.39, plus interest. (CODE 1 MAP 3819 TL 37)

Taxes for the year 1979-80 payable in the amount of \$325.77, plus interest. (CODE 1 MAP 3819 TL 37-1)

Personal property taxes for the year 1979 payable in the amount of \$1,360.13, plus interest. (Account No. 1-014905)

Personal property taxes for the year 1979 payable in the amount of \$1,759.42, plus interest. (Account No. 1-014910)

EXHIBIT B COLLATERAL NOTE

8897

\$ 100,000.00

Klamath Falls Oregon
City State

May 19 80
Date

FOR VALUE RECEIVED, the undersigned, Moty & Van Dyke, Inc.
promises to pay to the order of WALTER E. HELLER WESTERN INCORPORATED at its office, 111 S.W. Columbia Ave., Portland, Oregon 97201,
or at such other place as the holder hereof may appoint.

One Hundred Thousand and no/100----- Dollars.

payable in 36 successive monthly installments due on the 10th day of June 19 80, and on the same date of each month
thereafter until paid, the first 35 installments in the amount of \$ 2,700.00 each and the final installment in the amount of
\$ 5,500.00 with interest from the date hereof at the rate of * _____ per cent per annum until due or declared due, and at the

rate of * _____ per cent per annum after due or declared due, payable monthly on the whole amount of said principal sum remaining from time to
time unpaid, together with exchange, commission, charges, collection expenses, and reasonable attorney's fees if placed with any attorney for collection.
Demand, presentment for payment, protest, notice of non-payment or protest, is hereby waived by the maker and every endorser or guarantor hereof.

To secure the payment of the principal and interest of this note and all renewals and extensions of the same or any part thereof and any and all other sums, in-
debtedness and liabilities now or hereafter owing or to become owing from the undersigned to the payee, or the holder hereof, howsoever created, arising, evidenced or acquired
by said payee or holder, whether direct or contingent, the undersigned has assigned, pledged, deposited and delivered to the payee the following hereinafter called "Collateral":
granted and given to payee a general and continuing lien and security interest in and to
certain of its property in accordance with:

1. An Accounts Financing Security Agreement dated March 18, 1980,
 2. An Inventory Loan Security Agreement dated March 18, 1980,
 3. A Chattel Mortgage Security Agreement dated March 18, 1980,
 4. A Loan and Security Agreement of even date herewith, and
 5. Mortgages and Deeds of Trust of even date herewith,
- all of which together with all liens and security interests heretofore and hereafter granted,
is called "Collateral".

*Six percentage points per annum over the Prime Rate of The First National Bank of Oregon;
charged from time to time to its most financially responsible commercial customers; computed
on an actual day basis. Minimum interest rate to be fifteen percent (15%) per annum.

with full power and authority to the payee to transfer, assign, pledge or replace the same in whole or in part. In case of exchange of, or substitution for, or addition to the
collateral, the provisions hereof shall extend to such exchanged, substituted, or additional collateral. Upon the payment of this note, the holder may nevertheless retain the
collateral hereby pledged to secure the payment of the other sums, indebtedness and liabilities, if any, for which the same is pledged. The payee and every holder hereof are
expressly released from all obligation or liability to protect, collect, demand payment of, protest or enforce any said collateral, or to take any action whatever in regard
thereto or in regard to any goods or property represented thereby or thereto appertaining, or for any loss of or depreciation in the value of any thereof.

If this note or any renewal or extension thereof, or any other indebtedness or obligation secured hereby, or any installment of principal or interest upon any of the
foregoing shall not be paid when due, or in case of default in the performance of any of the terms or provisions hereof, or of any other agreement with the payee or the
holder of this note relating to said note or to the said collateral, or if the holder hereof shall at any time deem the collateral to have depreciated in value or if the undersigned
becomes insolvent or makes an assignment for the benefit of creditors, or if bankruptcy proceedings or proceedings for reorganization under the National Bankruptcy Act, or
proceedings for the appointment of a receiver, trustee or custodian for the undersigned or its property be commenced by or against the undersigned, or if any change takes
place in the ownership of the business of the undersigned, or the undersigned sells, conveys, transfers or otherwise disposes of its property or assets in whole or in part
outside of the ordinary and usual course of business, or if any judgment be rendered against or suffered by the undersigned, or if any change takes place in the ownership of the business of the undersigned, or the undersigned sells, conveys, transfers or otherwise disposes of its property or assets in whole or in part
of its property, or if for any reason the payee or holder hereof in its opinion shall deem itself insecure, the holder may, without notice or demand, declare the entire amount
of this note and all other indebtedness or liabilities of the undersigned to the holder to be immediately due and payable and proceed to collect and enforce the same at once,
and upon the occurrence of any of the events aforesaid, the holder hereof may at any time or from time to time, with or without declaring the indebtedness hereby ex-
pressly pledged, at public or private sale, or on any public exchange or brokerage board, for cash or on credit, on such terms as the holder may accept, and may apply the
net proceeds, after deducting all costs, expenses and attorney's fees incurred at any time in the collection, protection, sale and delivery of said pledged collateral, to the pay-
ment of the sums owing on this note and any other indebtedness or liabilities of the undersigned to the holder hereof so far as such proceeds may reach, returning the excess,
if any, to the undersigned on demand. The payee or holder hereof may bid and become the purchaser at any such sale. The holder may also at any time, without notice,
appropriate and apply toward the payment of said note or other indebtedness or liabilities, whether accrued or not, any and all balances, credits, deposits, accounts, re-
serves, collections, drafts, notes, checks, indebtedness and moneys in or coming into its hands belonging or owing to the undersigned. Such applications, or any moneys paid to
the holder, may be applied at the holder's option and without notice, partly or entirely on this note or on any other indebtedness or liability of the undersigned to the
holder, as the holder may elect.

And the undersigned hereby authorizes irrevocably any attorney to appear for the undersigned in any court of record in the United States where the same is allowed
by law, in term time or vacation, and waive the issue and service of process and confess a judgment against the undersigned at any time after this note becomes due by
the lapse of time or is declared due by the holder, for such amount as may appear to be unpaid or declared due and payable hereon, together with costs and reasonable
attorney's fees to be included in the judgment, further authorizing said attorney to release all errors and waive all right of appeal and consent to immediate execution upon
such judgment, agreeing that no writ of error or appeal shall be prosecuted on such judgment nor any bill in equity filed to restrain the operation of said judgment, or any
execution thereon, and hereby ratifying and confirming all that the undersigned's said attorney may do by virtue hereof. This paragraph shall be of no effect in the State of
Indiana, or in any other state in which the inclusion of this paragraph would affect the validity, legality, negotiability or enforcement of this note, but in such case all the
herein.

The holder shall not be required to look to the collateral for the payment of this note, but may proceed against the undersigned in such manner as it deems desir-
able. None of the rights or remedies of the holder hereunder are to be deemed waived or affected by failure or delay to exercise same. All remedies conferred upon the holder
by this note or any other instrument or agreement shall be cumulative and none is exclusive, and such remedies may be exercised concurrently or consecutively at the
holder's option.

SEE ADDITIONAL PROVISION ON REVERSE
SIDE CONCERNING MINIMUM EARNINGS.

ATTEST:

MOTY & VAN DYKE, INC.

Secretary

By

President

Its

FOR VALUE RECEIVED, each and all of the undersigned endorers hereon (regardless of time, order or place of our signature hereto) in addition to the obligations imposed by endorsement and waiving all notices of every character and nature, hereby accept and assent to all the terms, conditions and waivers contained in the within note and do jointly and severally unconditionally guarantee the prompt payment of all installments of principal and interest thereof, together with any other sums that may become owing thereon, when due or declared due, or any time thereafter, also authorizing and consenting to and waiving notice of any and all extensions of time, renewals or changes in mode or terms of payment of said note and the taking, surrender or release of any or all collateral or security or the substitution or taking of other or additional collateral, hereby waiving notice of the acceptance of this guaranty, and waiving demand, presentation, protest, notice of protest or of non-payment or of partial payments and notice of every other kind or nature, and assenting and agreeing that recovery hereon may be had against us or any or all of us in one or more successive suits or suits brought hereon against any one or more or all of us, with or without joining the maker or any of the other endorers or guarantors at the option of the holder. None of the rights or remedies of the holder of said note shall be deemed waived by any failure or delay to exercise same. Nothing except cash payment in full to the holder of said note shall release the undersigned or any of the undersigned. The holder hereof shall not be required to look to any collateral or other security held for the payment of said note.

To further secure the payment hereof the undersigned hereby jointly and severally authorize irrevocably any attorney to appear for the undersigned and each of the undersigned in any court of record in the United States where the same is allowed by law, in term time or vacation, and waive the issue and service of process and confess a judgment against the undersigned or any of the undersigned, jointly or severally, at any time after this note becomes due by the lapse of time or is declared due by the holder, for such amount as may appear to be unpaid or declared due and payable hereon, together with costs and reasonable attorney's fees to be included in the judgment, further authorizing said attorney to release all errors and waive all right of appeal and consent to immediate execution upon such judgment, agreeing that no writ of error or appeal shall be prosecuted on such judgment nor any bill in equity filed to restrain the operation of said judgment, or any execution thereon, and hereby ratifying and confirming all that the undersigned's said attorney may do by virtue hereof. This paragraph shall be of no effect in the State of Indiana, or in any other state in which the inclusion of this paragraph would affect the validity, legality, or enforcement of this endorsement and guaranty, but in such case all the remaining terms and provisions of this endorsement and guaranty shall subsist and be fully effective according to the tenor of this endorsement and guaranty the same as though this paragraph had never been included herein.

Notwithstanding any other provision of this note, and regardless of whether or not Maker desires to or does repay any portion of the \$100,000 to be loaned hereunder in advance of the time when such payment is required, Heller shall be entitled to earn on such \$100,000 loan and shall be paid by Maker the sum of Twenty Thousand (\$20,000) Dollars during the period from date of execution of this agreement to a date one (1) year after execution of this agreement. Accordingly, Maker shall pay Heller on the date one year after the date of execution of this agreement, the sum of \$20,000, less interest paid by Maker to Heller prior to such time on account of the \$100,000 loan. Payments made by Maker on such \$100,000 loan after such one year period shall not reduce such \$20,000 payment to be made to Heller and interest paid to Heller on other obligations including any loans pursuant to the Accounts Financing Security Agreement or Inventory Loan Security Agreement between the parties shall not reduce such \$20,000 payment either regardless of when paid or accrued. Heller does not believe that the minimum earnings provisions contained herein constitute a prepayment penalty, but nevertheless includes the following special notice in case such minimum earnings provision is construed to be a penalty for prepayment:

NOTICE TO THE BORROWER

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

Return to:

Walter E. Heller Western Inc.

PO Box 489

D. Sh... OR 97207

attn: Judith Taylor

STATE OF OREGON; COUNTY OF KLAMATH; ss.:

I hereby certify that the within instrument was received and filed for record on the 14th day of May A.D., 19 80 at 4:00 o'clock P M., and duly recorded in Vol M80 of Mortgages on Page 8888.

FEE \$38.50

WM. D. MILNE, County Clerk

By Bernetha Helsord Deputy