

August 8

1980

87998

Terry D. Sherrill and Janet R. Sherrill  
Plamath Falls, Oregon 97601

\_\_\_\_\_Mortgagor  
 \_\_\_\_\_Address  
 \_\_\_\_\_Branch  
 \_\_\_\_\_Address  
 \*(Borrower)

707 South Fifth Street, Klamath Falls, Oregon 97601

740 Main Street, Klamath Falls, Oregon 97601  
Terry D. Sherrill and Janet R. Sherrill

The Lender has loaned Terry D. Sheriff, which is repayable with interest according to the terms of the promissory note, under and under any extension of time or change of conditions of the loan, the sum of \$100,000.00 Dollars, together with interest, that the Lender may in its discretion loan to Borrower or Mortgagee as this mortgage, under which the final payment of principal and interest payable under the note and under any extensions of time or change of conditions of the loan shall mean (a) the principal and interest payable under the note and under any extensions of time or change of conditions of the loan, (b) any future amounts, together with interest, renewals of the note, (c) any sums paid or advanced by the Lender to discharge obligations of Mortgagor under this mortgage and any extensions and renewals, and (d) any sums paid or advanced by the Lender to discharge obligations of Mortgagor as permitted under this mortgage; with interest. In addition to the terms and conditions stated above, this mortgage is given to secure bank debt previously incurred in the amount of \$50,000 and an additional advance of \$50,000 on a one-time basis, total debt not to exceed \$100,000. To secure payment of the indebtedness and performance of all obligations of Mortgagor under this mortgage, Mortgagor mortgages and conveys unto the Lender, his heirs, assigns, personal representatives, executors, administrators, trustees, agents, attorneys-in-fact, successors, assigns, and assigns, all rights, title, and interest in and to the following property in Klamath County, State of Oregon:  
The Lender on the terms set out below the following property in \_\_\_\_\_

Exhibit "A" consisting of one page of legal description

[illegible]

See attached  
of property  
the 2004-201

[illegible][illegible]

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arized. If a lien arises or is filed as a result of the filing of a notice of sale, the lien arises or, if a lien is already in existence, the lien is perfected, the mortgagor shall within 15 days after the filing of the notice of sale, or if the mortgage is a purchase money mortgage, within 15 days after the mortgage is recorded, deposit with the Lender cash or a security instrument acceptable to the Lender as security satisfactory to the Lender for the balance of the debt secured by the mortgage.

8. MORTGAGE DEBTORS OF THE  
with all appurtenances, all existing or subsequently erected  
ments or fixtures, and, unless this mortgage is  
of consumer credit, requiring  
Mortgagor also

[illegible]

3.3 The assessor or tax collector of the county in which the property is located is authorized to deliver to the Lender a copy of the assessment or tax assessed or owing at any time.

3.3 The assessor or tax collector of the jurisdiction in which the property is located is authorized to deliver to the Lender a statement of the property taxes assessed or owing at any time.

4. **Insurance.** The Grantor shall carry such insurance as the Property is located in and shall include insurance on a standard statement of the property taxes assessed against the Property.

1. **Possession and Maintenance of the Property.**  
1.1. Until default, Mortgagor shall remain in possession and control of the Property and shall be free to operate and manage the Property.

[illegible][illegible]

the Property and shall be maintained in good condition, replacements shall be made as needed, and Lender shall promptly make all necessary repairs, maintenance, and improvements so that the value of the Property shall be maintained, and Mortgagor will not commit or permit any waste on the Property. Mortgagor shall comply with all applicable laws, ordinances, regulations and private contracts.

[illegible]

2. To the extent that Mortgagor shall operate the Property as a farm or orchard, Mortgagor shall operate the land and improve the same so as to prevent deterioration, reasonable wear and tear, and depreciation.

2. To the extent that the Mortgagor shall own any interest in any real property or a farm or orchard, Mortgagor shall, at all times, protect and preserve the same to prevent deterioration of the land and in such manner as to prevent reasonable wear and tear in such manner as to prevent reasonable wear and tear, except for reasonable cultivation, improvements including fences, except for reasonable cultivation, and other improvements to the extent that the land is under cultivation, and to the extent that the Property according to good and customary practice shall be maintained and made a final

in such manner as to prevent the Lender from making any improvements including fences, except for those improvements necessary for proper use, and to the extent that the land is under cultivation, the Lender shall cultivate or otherwise operate the Property according to good agricultural practices and shall not remove any improvements.

1.3 Mortgagor shall not demolish or remove any Improvements on the Property without the written consent of Lender.

1-3. Mortgagor shall not demolish or alter the structure or any part thereof without the written consent of Lender, and shall apply the proceeds to the restoration or repair of the Property.

2. **Completion of Construction.** The loan creating the indebtedness shall be used to construct or complete construction of any building or improvement on the property. If some or all of the proceeds of the loan creating the indebtedness are used to construct or complete construction of any building or improvement on the property, the date of this agreement shall be the date of the completion of construction of the building or improvement on the property.

2. **Completion of Construction.** If some or all of the proceeds of the construction loan are to be used to construct or complete construction on the Property, the improvement shall be completed on or before the date of this Agreement, and the Borrower shall pay in full all costs and expenses in connection with the completion of the improvement.

5.1 If allowed by law, Lender shall otherwise expressly agree in writing, Lender to maintain reserves for payment of taxes and other charges against the Property (including but not limited to real estate taxes, interest on tax liens, and premiums on bonds or policies required by local, state or federal authorities) or premiums

3. **Taxes and Liens.** The Mortgagor shall pay before they become delinquent all taxes, assessments and other charges against the Property, or quasi-governmental bodies) or premiums or both. The reserves shall be created by the Mortgagor for the amount determined by the

**3- Taxes and Liens:**

3.1 Mortgagor shall pay before they become delinquent all taxes, assessments or quasi-governmental charges levied against or on account of the Property, or both; The reserves shall be created by the Lender of an amount determined by the date they are due amount to produce by the date they are due amount to insurance premiums to be paid.

[illegible][illegible]

5.2 If the Lender carries mortgage (d) payment of all or any part of the interest shall be paid by the

5.2 If the Lender carries out the repayment of all or any part of the loan, the repayment of all or any part of the loan for such insurance shall be paid by the Lender. The Lender may require Mortgagee to pay for such insurance.

except for "Permitted Encumbrances," taxes and assessments not delinquent, and provided in 3.2.

3.2. Mortgagor may withhold payment of the Obligations by law, or claim in connection with a good faith dispute over the Obligations to pay, so long as the Lender's interest in the Property is not jeopardized by the withholding of payment. If the name of the borrower is different from the Mortgagor,

\*Insert "Mortgagor" or the name of the borrower if different from

to pay  
\*Insert "Mortgagor" or the  
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such purpose in the same manner as for taxes and property insurance, and subject to the same agreements.

5.3 If Mortgagor desires to carry a package plan of insurance that includes coverage in addition to that required under this mortgage, the Lender, if allowed by law, may at its option establish and administer a reserve for that purpose. In such event the premium attributable to the required insurance coverage shall be quoted separately, and the Lender may permit Mortgagor to furnish a certificate of insurance rather than deposit the policy as required in 4.2. If at any time the Lender holds an insufficient amount in the insurance reserve to cover the premium for the entire package policy, the Lender may, at its discretion, pay only that portion of the premium attributable to the required insurance coverage. If the blanket policy does not permit such partial payment, the Lender may use the reserve funds for the premium on a new, separate policy, providing the required insurance coverage and allow the package policy to lapse.

5.4 Lender shall not charge a service charge for collecting reserves and paying taxes and insurance premiums. The reserves shall not constitute a trust. Mortgagor agrees that Lender may commingle reserve funds with other funds of Lender, and need not invest them for the benefit of Mortgagor. Mortgagor agrees that Lender need not pay Mortgagor interest on reserves, unless applicable statutes require payment of interest notwithstanding any contrary agreement.

## 6. Expenditures by the Bank.

If Mortgagor shall fail to comply with any provision of this mortgage, the Lender may, at its option, on Mortgagor's behalf take the required action and any amount that it expends in so doing shall be added to the Indebtedness. Amounts so added shall be payable on demand with interest at the same rate as provided in the note from the date of expenditure. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which the Lender may be entitled on account of the default, and the Lender shall not be taking the required action cure the default so as to bar it from any remedy that it otherwise would have had.

## 7. Late Payment Charges.

To cover the extra expense involved in handling delinquent payments, Lender may charge a late charge on any scheduled payment which Lender does not receive within 15 days after the due date, or by the next business day, if the 15-day period ends on a Saturday, Sunday, or legal holiday. The amount of the late charge shall be as specified in the note or, if the note specifies no late charge, \_\_\_\_\_ percent of the payment of principal and interest, or portion of such payment, which Lender does not receive within the 15-day period. The late charge under the note or under this mortgage shall in no event exceed the maximum charge, if any, specified under applicable law. Collection of a late charge shall not constitute a waiver of or prejudice the Lender's right to pursue any other right or remedy available on account of the delinquency.

## 8. Warranty; Defense of Title.

8.1 Mortgagor warrants that he holds merchantable title to the Property in fee simple, free of all encumbrances other than (a) those enumerated in the title policy, if any, issued for the benefit of the Lender in connection with this transaction and accepted by the Lender; and (b) the encumbrances described as:

(hereinafter referred to as "Permitted Encumbrances").

8.2 Mortgagor warrants and will forever defend the title against the lawful claims, other than Permitted Encumbrances, of all persons. In the event any action or proceeding is commenced that questions Mortgagor's title or the interest of the Lender under this Mortgage, Borrower shall defend the action at Borrower's expense.

8.3 If any Permitted Encumbrance is a lien, Borrower shall pay any sums and do any other acts necessary to prevent a default or prevent any action or condition which, with the lapse of time, the giving of notice, or any other action of a creditor, would be a default or enable any creditor to declare a default or foreclose any Permitted Encumbrance which is a lien.

## 9. Condemnation.

9.1 If all or any part of the Property is condemned, the Lender may at its election require that all or any portion of the net proceeds of the award be applied on the Indebtedness. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Mortgagor and the Lender in connection with the condemnation.

9.2 If any proceedings in condemnation are filed, Mortgagor shall promptly take such steps as may be necessary to defend the action and obtain the award.

## 10. Imposition of Tax by State.

10.1 The following shall constitute state taxes to which this paragraph applies:

(a) A specific tax upon mortgages or upon all or any part of the Indebtedness secured by a mortgage.

(b) A specific tax on the owner of mortgaged property which the taxpayer is authorized or required to deduct from payments on the mortgage.

(c) A tax on mortgage premises chargeable against the mortgagee or the holder of the note secured.

(d) A specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by a mortgagor.

10.2 If any federal, state or local tax to which this paragraph applies is enacted subsequent to the date of this mortgage, this shall have the same effect as a default, and the Lender may exercise any or all of the remedies available to it in the event of a default unless the following conditions are met:

(a) Mortgagor may lawfully pay the tax or charge imposed by the state tax; and

(b) Mortgagor pays or offers to pay the tax or charge within 30 days after notice from the Lender that the tax law has been enacted.

## 11. Transfer by Mortgagor.

11.1 Mortgagor shall not, without the prior written consent of the Lender, transfer Mortgagor's interest in the Property, whether or not the transferee assumes or agrees to pay the Indebtedness. If Mortgagor or a prospective transferee applies to the Lender for consent to such a transaction, the Lender may require such information concerning the transferee as would normally be required from a new loan applicant. The Lender shall not unreasonably withhold its consent.

11.2 As a condition of its consent to any transfer, the Lender may in its discretion impose a service charge not exceeding one percent of the original amount of the Indebtedness, and may increase the interest rate of the Indebtedness to any rate which is satisfactory to Lender, and does not exceed any maximum interest rate set by law, and adjust the monthly payment to include the increased interest.

11.3 No transfer by Mortgagor shall relieve Mortgagor of liability for payment of the Indebtedness. Following a transfer, the Lender may agree to any extension of time for payment or modification of the terms of this mortgage or the promissory note or waive any right or remedy under this mortgage or the promissory note without relieving Mortgagor from liability. Mortgagor waives notice, presentment and protest with respect to the Indebtedness.

## 12. Security Agreement; Financing Statements.

12.1 This instrument shall constitute a security agreement with respect to any personal property included within the description of the Property.

12.2 Mortgagor shall join with the Lender in executing one or more financing statements under the Uniform Commercial Code and shall file the statement at Mortgagor's expense in all public offices where filing is required to perfect the security interest of the Lender in any personal property under the Uniform Commercial Code.

## 13. Release on Full Performance.

If Mortgagor pays all of the Indebtedness when due and otherwise performs all of its obligations under this mortgage and the note, the Lender shall execute and deliver to Mortgagor a suitable release and satisfaction of this mortgage and suitable statements of termination of any financing statements on file evidencing the Lender's security interest in personal property.

## 14. Default.

The following shall constitute events of default:

14.1 Failure of Mortgagor to pay any portion of the Indebtedness when it is due.

14.2 Failure of Mortgagor within the time required by this mortgage to make any payment for taxes, insurance, or mortgage insurance premiums or for reserves for such payments, or any payment necessary to prevent filing of or discharge any lien.

14.3 Failure of Mortgagor to perform any other obligation under this mortgage within 20 days after receipt of written notice from the Lender specifying the failure.

14.4 If this mortgage secures a construction loan, any failure of Mortgagor or builder to comply with or perform any provision of any construction loan agreement executed in connection with the loan within 20 days after receipt of written notice from Mortgagee specifying the failure.

14.5 Default in any obligation secured by a lien which has or may have priority over this Mortgage, or the commencement of any action to foreclose any prior lien.

## 15. Rights and Remedies on Default.

15.1 Upon the occurrence of any event of default and at any time thereafter, the Lender may exercise any one or more of the following rights and remedies:

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(a) The right at its option by notice to Borrower to declare the entire indebtedness immediately due and payable.

(b) With respect to all or any part of the Property that constitutes realty, the right to foreclose by judicial foreclosure in accordance with applicable law.

(c) With respect to all or any part of the Property that constitutes personalty, the rights and remedies of a secured party under the Uniform Commercial Code.

(d) The right, without notice to Mortgagor, to take possession of the Property and collect all rents and profits, including those past due and unpaid, and apply the net proceeds, over and above the Lender's costs, against the Indebtedness. In furtherance of this right the Lender may require any tenant or other user to make payments of rent or use fees directly to the Lender, and payments by such tenant or user to the Lender in response to its demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed.

(e) The right in connection with any legal proceedings to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property and to operate the Property preceding foreclosure or sale and apply the proceeds, over and above cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. The Lender's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the Indebtedness by a substantial amount.

(f) Any other right or remedy provided in this mortgage or the promissory note evidencing the Indebtedness.

15.2 In exercising its rights and remedies, the Lender shall be free to sell all or any part of the Property together or separately or to sell certain portions of the Property and refrain from selling other portions. The Lender shall be entitled to bid at any public sale on all or any portion of the Property.

15.3 The Lender shall give Mortgagor reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the property is to be made. Reasonable notice shall mean notice given at least ten days before the time of the sale or disposition.

15.4 A waiver by either party of a breach of a provision of this agreement shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by the Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Mortgagor under this mortgage after failure of Mortgagor to perform shall not affect the Lender's right to declare a default and exercise its remedies under this paragraph 15.

15.5 In the event suit or action is instituted to enforce any of the terms of this mortgage, the Lender shall be entitled to recover from Mortgagor such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. All reasonable expenses incurred by the Lender that are necessary at any time in the Lender's opinion for the protection of its interest or the enforcement of its rights, including without limitation, the cost of searching records, obtaining title reports, surveyors' reports, attorneys' opinions or title insurance, whether or not any court action is involved, shall become a part of the Indebtedness payable on demand and shall bear interest at the same rate as provided in the note from the date of expenditure until repaid.

#### 16. Notice.

Any notice under this mortgage shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the address stated in this mortgage. Either party may change the address for notices by written notice to the other party.

#### 17. Succession; Terms.

17.1 Subject to the limitations stated in this mortgage on transfer of Mortgagor's interest, this mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns.

17.2 In construing this mortgage the term mortgage shall encompass the term security agreement when the instrument is being construed with respect to any personal property.

17.3 Attorneys' fees. "Attorneys' fees," as that term is used in the note and in this mortgage, shall include attorneys' fees, if any, which may be awarded by an appellate court.

*Terry D. Janet*  
*Janet R. Sherrill*

#### INDIVIDUAL ACKNOWLEDGMENT

STATE OF OREGON )

County of Klamath ) ss.

8-8, 1980

Personally appeared the above-named Terry D. Janet  
R. Sherrill and acknowledged the foregoing instrument to be their voluntary act.



#### CORPORATE ACKNOWLEDGMENT

STATE OF OREGON )

County of \_\_\_\_\_ ) ss.

Personally appeared \_\_\_\_\_, 19\_\_\_\_, and \_\_\_\_\_, who, being sworn, stated that \_\_\_\_\_ is a \_\_\_\_\_, and \_\_\_\_\_, the said \_\_\_\_\_, is a \_\_\_\_\_

of Mortgagor corporation and that the seal affixed hereto is its seal and that this Mortgage was voluntarily signed and sealed in behalf of the corporation by Authority of its Board of Directors.

Before me:

Notary Public for Oregon  
My commission expires:

#### PARTNERSHIP ACKNOWLEDGMENT

STATE OF OREGON )

County of \_\_\_\_\_ ) ss.

THIS CERTIFIES that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named \_\_\_\_\_

known to me to be the person named in and who executed the foregoing instrument and who \_\_\_\_\_ known to me to be a member of the partnership of \_\_\_\_\_

acknowledged to me that he executed said instrument freely and voluntarily for the purposes and use therein mentioned, on behalf of said partnership.

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

Before me:

Notary Public for Oregon  
My commission expires:

## DESCRIPTION

PARCEL 1

Lots 1, 2, 3, 4 and 5 in Block 106; KLAMATH ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, EXCEPT THEREFROM any portion of Lot 5 conveyed to the City of Klamath Falls, by Deed recorded February 6, 1969, in Volume M69, page 1033, Microfilm Records of Klamath County, Oregon.

PARCEL 2

An irregular tract of land located in Government Lots 3 and 10, Section 32, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Commencing at the East quarter corner of Section 32, Township 38 South, Range 9 East of the Willamette Meridian; thence South  $69^{\circ} 36'$  West a distance of 38.1 feet to a point on the Southeasterly line of Kinlock St.; thence South  $38^{\circ} 56'$  West along said Southeasterly line of Kinlock St. a distance of 16.47 feet to the true point of beginning; thence South  $10^{\circ} 46\frac{1}{2}'$  West 246.59 feet, more or less, to its intersection with the Westerly line of Fifth Street in Klamath Falls, Oregon, if extended; thence North  $51^{\circ} 04'$  West a distance of 116.51 feet, more or less, to the intersection of said Westerly line of Fifth St. and the Southeasterly line of Kinlock St.; thence North  $38^{\circ} 56'$  East a distance of 217.33 feet; along the said Southeasterly line of Kinlock St., to the point of beginning, EXCEPTING that part lying Northerly of the South line of South Fifth Street.

PARCEL 3

Beginning at the intersection of the centerline of Fifth Street and the Southeasterly line of Kinlock Street, as shown on the plat of "KLAMATH ADDITION" to the Town of Linkville, now Klamath Falls, on file in the office of the County Clerk, Klamath County Courthouse; thence North  $51^{\circ} 04'$  West along said centerline a distance of 19.0' to a point, said point being the point of tangency of a curve concave to the East and having a radius of 30.00 feet, a radial line to said point bearing South  $38^{\circ} 56'$  West; thence Northerly along said curve a distance of 47.12 feet to a point on the Southwesterly line of Lot 6, Block 106 of said Klamath Addition a radial line to said point bearing North  $51^{\circ} 04'$  West; thence South  $51^{\circ} 04'$  East along the Southwesterly line of said Lot 6 to the Southwest corner of said Lot 6; thence North  $38^{\circ} 56'$  East, a distance of 19.06 feet along the Southeasterly line of said Lot 6 to a point on the Southerly right of way line of the Klamath Falls-Lakeview Highway as relocated said right of way being on a curve concave to the North having a radius of 316.48 feet and a central angle of  $25^{\circ} 28' 23''$ ; thence Southeasterly along said curve right of way line a distance of 49 feet more or less to its intersection with the Southeasterly line of Kinlock Street; thence South  $38^{\circ} 56'$  West along said Southeasterly line a distance of 86 feet more or less to the point of beginning.

PARCEL 4

A tract of land situated in Lot 6, Block 106 of KLAMATH ADDITION to the Town of Linkville, now Klamath Falls, according to the official plat thereof on file in the office

(continued)

PARCEL 4 (continued)

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of the County Clerk of Klamath County, Oregon, described as follows:

Beginning at the most Southerly corner of Lot 6, Block 106 of Klamath Addition to the Town of Linkville; thence North 51° 04' West along the Southwesterly line of said Lot 6, a distance of 14.00 feet to a point; thence North 38° 56' East a distance of 7.42 feet to a point on a curve concave to the North having a radius of 316.48 feet, a radial bearing to said curve at said point being South 00° 50' 10" West; thence Easterly along said curve, a distance of 18.21 feet to a point on the Southeasterly line of said Lot 6, a radial bearing to said curve at said point being South 2° 27' 39" East; thence South 38° 56' West along said Southeasterly line a distance of 19.06 feet to the true point of beginning.

  
TERRY D. SHERRILL

  
JANET R. SHERRILL

STATE OF OREGON; COUNTY OF KLAMATH; ss.  
Filed for record at request of U. S. National Bank of Oregon  
this 8th day of August A. D. 1980 at 4:26 o'clock P. M., and  
fully recorded in Vol. M80, of Mortgages on Page 14856

Fee \$17.50

W<sup>m</sup> D. MILNE, County Clerk  
By 