

K-35888

18790

MORTGAGE

Vol. 1182 Page 18478

THIS INDENTURE made this 23rd day of December, 1982, by and between CHARLES W. BIAGGI and PEGGY J. BIAGGI, husband and wife, and THOMAS M. VENABLE and PATRICIA A. VENABLE, husband and wife, hereinafter called "Mortgagor", and THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association hereinafter called "Mortgagee".

WHEREAS, the said Mortgagor is justly indebted to the said Mortgagee in the sum of TWO MILLION AND NO/100 \* \* \* \* \* Dollars (\$2,000,000.00), which sum with interest thereon is to be repaid according to the terms of ~~XXXXXX~~ of even date herewith providing for the payment thereof in three promissory notes each installments, the last of which is due and payable on the first day of December, 1983.

NOW THIS INDENTURE WITNESSETH: The Mortgagor for the better securing the payment to Mortgagee of the said indebtedness with the interest thereon, together with all renewals thereof, and also for and in consideration of the sum of One Dollar (\$1.00) to Mortgagor in hand paid by Mortgagee, does hereby grant, bargain, sell and convey unto Mortgagee all of the following described real property situated in the City of ---, County of Klamath State of Oregon, to wit:

See Exhibit "A" attached hereto and incorporated herein.

TOGETHER with all and singular the tenements, hereditaments and appurtenances in and to said premises, and the rents, issues and profits thereof, and also all fixtures and articles of personal property owned by Mortgagor and now or at any time hereafter attached to or used in any way in connection with the use, operation and occupation of the above described real estate, and any and all buildings now or hereafter erected thereon, including but without being limited to all screens, awnings, storm windows and doors, window shades, inlaid floor coverings, boilers, tanks, furnaces, radiators, and all heating, lighting, plumbing, gas, electric, ventilating, refrigerating, air conditioning and incinerating equipment of whatsoever kind and nature, all of which fixtures and articles of personal property are hereby declared and shall be deemed to be fixtures and accessory to the freehold and a part of the realty as between the parties hereto, and all persons claiming by, through or under them, and shall be deemed to be a portion of the security for the indebtedness herein mentioned and be subject to the lien of this mortgage.

TO HAVE AND TO HOLD the above granted premises unto the said Mortgagee, its successors and assigns, forever.

PROVIDED ALWAYS, that if Mortgagor pays unto Mortgagee the said indebtedness mentioned in said note, and the interest thereon, at the time and in the manner specified therein, and shall perform and discharge each and every obligation, covenant, and agreement herein contained, then these presents and the estate hereby granted shall cease, determine and be void.

## AND THE SAID MORTGAGOR COVENANTS WITH MORTGAGEE AS FOLLOWS:

FIRST. That Mortgagor is lawfully seized in fee simple of the premises above described; that said premises are free and clear of all liens and encumbrances of every nature and kind whatsoever;

and that Mortgagor will forever warrant and defend the same unto said Mortgagee, its successors and assigns, against the lawful claims and demands of all persons whomsoever.

SECOND. That Mortgagor will pay the indebtedness in said note provided promptly when due.

THIRD. That so long as said note shall remain unpaid in whole or in part: Mortgagor will pay all taxes, assessments and other charges that may be levied or assessed upon or against said premises before they become delinquent; provided, however, that any tax or assessment against the mortgaged premises may be paid in installments in any manner permitted by law.

FOURTH. That Mortgagor will keep all the improvements erected on said premises in good order and repair and will not do or permit waste of the property hereby mortgaged, and will not suffer or permit any lien to be hereafter created upon said property, or any part thereof, prior to the lien of this mortgage, and will not do or suffer any act or omission whereby the lien hereof, or of any estate or title covered hereby may be impaired.

FIFTH. That so long as said note shall remain unpaid, in whole or in part, Mortgagor will keep the buildings now erected or which may hereafter be erected on said premises insured against loss or damage by fire, and against loss by such other hazards as the Mortgagee may from time to time require, in an amount not less than the full insurable value of such building or buildings. All such insurance shall be in such form and in some company or companies acceptable to Mortgagee and for the benefit of the Mortgagee and Mortgagor will deliver the policies and renewals for all insurance on said property, with suitable and satisfactory mortgage clause endorsed thereon, to the Mortgagee promptly after the issue thereof, and should Mortgagor fail to insure or deposit said policies and renewals thereof as herein provided, Mortgagee may procure said insurance at the expense of the Mortgagor, which expense shall become a part of the debt secured hereby, and the Mortgagor agrees to pay the same on demand with interest at ten per cent (10%) per annum from the date of payment. In case of any loss covered by such insurance Mortgagee may, at its option, require the proceeds of any insurance policies upon the said property 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. That if requested Mortgagor will keep the buildings insured against war damage for the benefit of Mortgagee in such form, in such governmental agencies or bureaus or in such private companies and in such amount as Mortgagee may elect, and that Mortgagor will deliver the policies and any renewals thereof, or other evidence of such insurance, to Mortgagee.

## IT IS FURTHER EXPRESSLY UNDERSTOOD AND AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Should said Mortgagor fail to pay any installment of principal or interest as the same becomes due or if any default be made in the performance of any of the covenants or agreements of this mortgage to be kept and performed by the Mortgagor, or if any default be made in the payment of any tax or assessment or of any installment of any assessment for local improvements payable in installments and such default continues for fifteen (15) days, or in the event of the sale of the Mortgagor's interest in the property herein described, the entire debt secured by this mortgage shall at once become due and payable if the Mortgagee so elects, and all notice of such election is hereby waived, and the holder of this mortgage may thereupon or at any time thereafter foreclose this mortgage in any manner permitted by law.

2. The Mortgagor agrees that no building or other property now or hereafter covered by the lien of this mortgage shall be removed, demolished or materially altered without the prior written consent of the Mortgagee, except that the Mortgagor shall have the right without such consent to remove and dispose of, free from the lien of this mortgage, such equipment covered hereby as from time to time become worn out or obsolete, provided that simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of comparable nature and value.

3. The Mortgagor agrees that, if the Mortgagee shall so require, the Mortgagor will, in lieu of making payment of taxes, assessments and insurance premiums directly to the taxing authorities and insurance companies, pay to the Mortgagee on each installment payment date provided in said promissory note such additional sum as shall, in the aggregate, provide the Mortgagee with sufficient funds to pay such taxes, assessments and insurance premiums when the same become due; and the Mortgagee agrees to apply such funds for that purpose.

4. Should Mortgagor fail to make payment of any taxes or assessments, or installment thereof, insurance premiums or other charges or encumbrances which now are or shall hereafter be or appear to be a lien upon said premises or any part thereof payable by Mortgagor, Mortgagee may, at its option, make payment thereof, and the amounts so paid, with interest thereon at ten per cent (10%) per annum, shall be added to and become a part of the debt secured by this mortgage, without waiver of any rights, arising from breach of any of the covenants hereof and for such payments with interest as aforesaid, the premises hereinbefore described, as well as the Mortgagor, shall be bound to the same extent that Mortgagor is bound for the payment of the note herein described, and all such payments shall be immediately due and payable without notice, and the non-payment thereof shall, at the option of the holder hereof, render all sums secured by this mortgage immediately due and payable and constitute a breach of this mortgage.

5. It is expressly agreed that time and the exact performance of all the conditions hereof are of the essence of this contract.

6. As part of the consideration for the making of the loan hereby secured, Mortgagor hereby assigns, transfers and sets over to Mortgagee all leases of any part of the mortgaged premises now in effect or hereafter made, and hereby assigns and transfers to Mortgagee all the right of Mortgagor to receive the rents reserved by such leases; provided, however, that until Mortgagor shall commit or permit some act of default under this mortgage, it is understood and agreed that the lessor may receive, collect and receipt for said rents, paying over to Mortgagee only so much thereof as is required to comply with the obligations resting upon Mortgagor under and by the terms hereof, but in the event that Mortgagor shall commit or permit any act of default hereunder, then and in that event, and from that time on, said lessees are authorized, required and directed to pay the rents thereafter falling due under and by the terms of said leases directly to Mortgagee, and Mortgagee is authorized to demand, collect, receive and receipt for such rents and apply the rents so collected, in its discretion, to any or all of the following purposes:

- (a) To the payment of any taxes assessed upon the mortgaged premises, whether or not the same be delinquent;
- (b) To the payment of any assessments or other governmental charges assessed against the demised premises, whether or not the same be delinquent;
- (c) To the payment of any insurance premiums paid or incurred by the Mortgagee, or any expenditure which, in the judgment of the Mortgagee, is proper for the care of the mortgaged property;
- (d) To the payment of any interest accrued on the indebtedness secured by this mortgage;
- (e) To the payment on account of the principal of the indebtedness secured by this mortgage, whether or not there be any payments on account of principal due at the time and whether or not the Mortgagee has exercised the right secured by this mortgage to declare the entire principal due by reason of any default hereunder.

EXHIBIT "A" (Partnership Agreement  
Venable and Biaggi)

Real property situated in the County of Klamath, and State of Oregon, described as follows, to-wit:

Township 37 South, Range 10 East of the Willamette Meridian:

PARCEL 1	Section 14:	W $\frac{1}{2}$ SW $\frac{1}{4}$
PARCEL 2	Section 15:	NW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ N $\frac{1}{2}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$
PARCEL 3	Section 23:	W $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$
PARCEL 4	Section 24:	SW $\frac{1}{4}$ SW $\frac{1}{4}$
PARCEL 5	Section 25:	W $\frac{1}{2}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$
PARCEL 6	Section 26:	E $\frac{1}{2}$ E $\frac{1}{2}$
PARCEL 7	Section 35:	NE $\frac{1}{4}$ NE $\frac{1}{4}$
PARCEL 8	Section 36:	All

Township 37 South, Range 11 $\frac{1}{2}$  East of the Willamette Meridian:

PARCEL 9	Section 32:	W $\frac{1}{2}$ SE $\frac{1}{4}$
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Township 38 South, Range 10 East of the Willamette Meridian:

PARCEL 10	Section 12:	NE $\frac{1}{4}$ , E $\frac{1}{2}$ of NW $\frac{1}{4}$ , NE $\frac{1}{4}$ of SE $\frac{1}{4}$
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Township 38 South, Range 11 $\frac{1}{2}$  East of the Willamette Meridian:

PARCEL 11	Section 6:	Government Lots 4, 5, 6 and 7, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$
PARCEL 12	Section 7:	Government Lots 1, 2, 3 and 4 W $\frac{1}{2}$ E $\frac{1}{2}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$
PARCEL 13	Section 8:	W $\frac{1}{2}$ SW $\frac{1}{4}$
PARCEL 14	Section 17:	W $\frac{1}{2}$
PARCEL 15	Section 18	Government Lots 1 and 2, NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$
PARCEL 16	Section 20:	SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$
PARCEL 17	Section 21:	S $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$
PARCEL 18	Section 27:	S $\frac{1}{2}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , EXCEPTING THEREFROM that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ conveyed to Oregon-California & Eastern Railway Co. by deed recorded November 4, 1927 in Book 79 at Page 56.

CONTINUED

EXHIBIT "A"

18481

PARCEL 19

Section 28:

$N\frac{1}{2}$ ,  $NE\frac{1}{2}SW\frac{1}{2}$ ,  $SE\frac{1}{2}$

PARCEL 20

Section 29:

$NE\frac{1}{2}$ ,  $SE\frac{1}{2}NW\frac{1}{2}$ ,  $E\frac{1}{2}SW\frac{1}{2}$

PARCEL 21

Section 32:

$NE\frac{1}{2}NW\frac{1}{2}$

7. If a default shall occur on the part of Mortgagor for failure to comply with any of the provisions of this mortgage, and complaint shall be filed to foreclose this mortgage, the court shall, on motion or application of Mortgagee, either at the time of filing such complaint or thereafter, and without regard to the condition of said property at such time, or its value, or the solvency or insolvency of Mortgagor, appoint a receiver to take charge of said property, and collect the rents and profits thereof during the pendency of such foreclosure, and apply such rents, issues and profits to the payment pro tanto of any taxes or assessments on the mortgaged property or any insurance premiums or any expenses in connection with the management, care and preservation of the property and to the reimbursement to Mortgagee of any taxes or assessments or insurance premiums or any other expenditures which it may have paid or advanced in connection with said property, and thereafter, to any amounts due under this mortgage, first deducting the charges and expenses of such receivership.

8. In any suit to foreclose this mortgage or to collect any charge growing out of any indebtedness hereby secured, or in any suit or action which the Mortgagee may be obliged to bring or to defend to effect or protect the lien hereof, or in any appeal thereof, or should an attorney be employed by the Mortgagee in connection herewith, the Mortgagor agrees to pay a reasonable sum as attorney's fees and all costs and expense in connection with said suit or action or any appeal thereof or employment, and further agrees to pay the reasonable costs of searching records and abstracting or insuring the title, and all such sums shall be secured hereby and included in the decree of foreclosure, if any.

9. In case of one or more defaults in the performance or observance of any of the covenants and agreements of any instrument now or hereafter evidencing or securing the principal debt hereby secured, the failure to exercise any right or remedy given in this mortgage shall not preclude the Mortgagee from exercising any right or remedy given herein in case of one or more subsequent defaults and notice of the exercise of such right or remedy is hereby waived, except for such notice as may be required by law.

10. The Mortgagee may from time to time release portions of the premises hereinbefore conveyed from the lien of this mortgage or may extend or modify the terms of the instrument or instruments evidencing the indebtedness secured hereby or may extend or modify the terms of this mortgage; and it is expressly agreed between the Mortgagor and Mortgagee that such partial release extension or modification shall not in any way impair or alter the lien of this mortgage or the rights of Mortgagee hereunder or affect the personal liability of the Mortgagor for the payment of the indebtedness hereby secured.

11. The word "Mortgagor" and the language of this instrument 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. All the covenants of the Mortgagor shall be binding upon the Mortgagor's heirs, executors, administrators, successors and assigns and shall inure to the benefit of the successors and assigns of the Mortgagee. No condition of this mortgage shall be deemed waived unless the same be expressly waived in writing.

IN WITNESS WHEREOF, said Mortgagor has properly executed this instrument the day and year herein first written.

*Charles W. Biaggi*  
*Peggy J. Biaggi* ..... (Seal)  
*Thomas M. Venable*  
*Patricia A. Venable* ..... (Seal)

INDIVIDUAL ACKNOWLEDGMENT

STATE OF OREGON, }  
County of Klamath ..... } ss.

THIS CERTIFIES that on this 28<sup>th</sup> day of December, 1982, before me, the undersigned, a Notary Public in and for the said county and state, personally appeared the within named Charles W. Biaggi and Peggy J. Biaggi and Thomas M. Venable and Patricia Venable who are known to me to be the identical persons described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily for the purposes and uses therein mentioned.

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

My commission expires April 6, 1985

*R. E. [Signature]*  
Notary Public in and for said County and State.

INDIVIDUAL ACKNOWLEDGMENT

18483

STATE OF OREGON,

County of \_\_\_\_\_ } ss.

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

who \_\_\_\_\_ known to me to be the identical person... described in and who executed the within instrument and acknowledged to me that \_\_\_\_\_ executed the same freely and voluntarily for the purposes and uses therein mentioned.

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

My commission expires \_\_\_\_\_

Notary Public in and for said County and State.

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... member... of the partnership of \_\_\_\_\_ and acknowledged to me that \_\_\_\_\_ he... executed said instrument freely and voluntarily for the purposes and uses 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.

My commission expires \_\_\_\_\_

Notary Public in and for said County and State.

Mortgage

TO

STATE OF OREGON, } ss.  
County of Klamath

I certify that the within instrument was received for record on the 28th day of December 19 82 at 3:36 o'clock P. M. and recorded in Book M82 on page 18478 Record of Mortgages of said County.

Witness my hand and seal of County affixed.  
Evelyn Biehn County Clerk  
County Clerk (Recorder)  
*[Signature]* Deputy

Fee \$24.00

AFTER RECORDING RETURN TO:  
THE BANK OF CALIFORNIA  
AGRI/BUSINESS DEPT.  
P.O. Box 987  
SACRAMENTO, CAL. 95805

CORPORATE ACKNOWLEDGMENT

STATE OF OREGON,

} ss.

THIS CERTIFIES that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a notary public in and for said county and state, personally appeared \_\_\_\_\_, both to me personally known, who, being duly sworn, did say that he, the said \_\_\_\_\_ is the president, and he, the said \_\_\_\_\_ is the secretary of \_\_\_\_\_ 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 said \_\_\_\_\_ and \_\_\_\_\_ acknowledged said instrument to be the true act and deed of said corporation.

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

My commission expires \_\_\_\_\_ Notary Public in and for said County and State.