

20549

## MORTGAGE

THIS INDENTURE, made this 16th day of February, 19 83 between  
 BATSELL BROS. OIL CO., a partnership; BATSELL BROTHERS OIL COMPANY, a partnership composed of\*  
 herein called "Mortgagor", and WESTERN BANK, an Oregon banking corporation, herein called "Mortgagee", \*Richard R. Batsell  
 and Larry D. Batsell; RICHARD R. BATSELL and LARRY D. BATSELL; and RICHARD R. BATSELL and LARRY  
 D. BATSELL, dba BATSELL BROTHERS OIL COMPANY.  
 WITNESSETH:

For value received by the Mortgagor from the Mortgagee, the Mortgagor does hereby grant, bargain, mortgage and convey  
 unto the Mortgagee all the following described property situated in Klamath County, Oregon, to-wit:

PARCEL 1:

The Southerly 80 feet of Lots 3 and 4, Block 65, BUENA VISTA ADDITION to the City of Klamath  
 Falls, Oregon; SAVE AND EXCEPT a strip of one foot in width off the Easterly end of said  
 premises, heretofore conveyed by the Klamath Development Co., to the City of Klamath Falls,  
 Oregon, for street purposes, by Deed recorded in Volume 46, page 155, Deed Records, Klamath  
 County, Oregon.

Lots 5 and 6, Block 65, BUENA VISTA ADDITION to the City of Klamath Falls, Oregon, according  
 to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon

EXCEPTING THEREFROM the following:

Beginning at  $\frac{1}{2}$ " iron pin marking the Southwest corner of said Block 65; thence North 140.10  
 feet to a  $\frac{1}{2}$ " iron pin; thence East 88.26 feet to a  $\frac{1}{2}$ " iron pin; thence East 6.74 feet to a  
 $\frac{1}{2}$ " iron pin; thence South 140.10 feet to a  $\frac{1}{2}$ " iron pin; thence West 6.74 feet to a  $\frac{1}{2}$ " iron pin;  
 thence West 88.26 feet to the point of beginning.

PARCEL 2:

All that portion of Lot 70, ENTERPRISE TRACTS, Klamath County, Oregon, described as follows:  
 Beginning at a point in the Southerly line of Sixth Street, at its intersection with a North  
 and South line 390.0 feet West of the East line of Lot 70; thence South 358.7 feet and West  
 17.5 feet to an iron pipe which is the True Point of Beginning; thence West 109.97 feet to an  
 iron pipe; thence South 295.3 feet to an iron pipe; thence on an 11 degree 30' curve to the  
 left a distance of 52.5 feet more or less to an iron pipe; then East a distance of 107.71 feet  
 to an iron pipe; thence North a distance of 347.8 feet to the True Point of Beginning, contain-  
 ing approximately 38,430 square feet. All as shown on Signal Oil Company Drawing C-944,  
 dated April, 1946.

Cont.

together with the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in anywise appertaining,  
 including but not limited to roads and easements used in connection with the premises; also, all fixtures, buildings and parts of  
 buildings situated upon said property, including but not limited to electric wiring and fixtures; furnace and heating system, water  
 heaters, fuel storage receptacles; plumbing, ventilating, water and irrigating systems; screens, doors; window shades and blinds,  
 shutters; cabinets, built-ins, linoleums and floor coverings, built-in stoves, ovens, garbage disposals, air conditions, refrigerators,  
 freezers, dishwashers; and all other fixtures now or hereafter installed in or on the premises; and any shrubbery, flora or timber now  
 growing or hereafter planted or growing thereon; and any and all replacements of any one or more of the foregoing items, in whole  
 or in part, all of which are hereby declared to be appurtenant to the land; and all the rents, issues and profits arising from the  
 mortgaged property.

TO HAVE AND TO HOLD the same unto the Mortgagee, its successors and assigns forever.

The Mortgagor does hereby covenant to and with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the  
 said real property, that it is the absolute owner of all items of property described hereinabove, that the said property is free from  
 encumbrances of every kind and nature, and that it will warrant and forever defend the same against the lawful claims and demands of  
 all persons whomsoever.

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained, to be  
 by the Mortgagor kept and performed and to secure the payment of the sum of \$ 175,000.00 and interest thereon in  
 accordance with the tenor of a certain promissory note executed by Batsell Bros. Oil Co., Inc.

dated \_\_\_\_\_, 19 \_\_\_\_\_, payable to the order of the Mortgagee in installments of not less than \$ 175,000.00  
 each plus interest, ~~on the~~ payable monthly  
~~xxx~~ until March 1, 19 84 when the balance then remaining unpaid shall be paid.

This Mortgage is also given as security for the payment of any and all other indebtednesses, obligations or liabilities of the  
 Mortgagor to the Mortgagee now existing or hereafter arising, matured or to mature, absolute or contingent and wherever payable,  
 including but not limited to such as may arise from endorsements, guarantees, acceptances, bills of exchange, promissory notes, or  
 other paper discounted by the Mortgagee or held by the Mortgagee, or taken as security for any loans or advances of any kind, sort or  
 description whatsoever.

1. That Mortgagor will pay, when due, the indebtedness hereby secured, with interest as prescribed by said note, and will pay, when due, all other sums secured hereby, and all taxes, liens and utility charges upon said premises, or for services furnished thereto. In addition thereto, it will pay, at the time of payment of each installment of principal and interest, such amount as Mortgagee shall estimate to be sufficient to produce, at least one month prior to the time when payment thereof shall become due, the amount of (a) taxes, assessments and other governmental rates and charges against said premises (herein all called "taxes") and (b) premiums upon insurance against loss or damage to said premises (said amounts being referred to hereinafter as "loan trust funds"). If the sums so paid shall be less than sufficient for said purposes, Mortgagee will also pay, upon demand, such additional sum as Mortgagee shall deem necessary therefor. If Mortgagor desires a "package" plan of insurance which includes coverage in addition to that required under this mortgage, Mortgagee may, at its option, establish and administer a reserve for that purpose. If the package plan reserve is not sufficient to pay the renewal premium on a package plan policy, then Mortgagee may use such reserve to pay premiums on a policy covering only risks required to be insured against under this mortgage and allow the package plan policy to lapse. Mortgagee shall, upon the written direction of Mortgagor, and may, without such direction, apply sums paid by Mortgagor and held by Mortgagee to the purposes aforesaid; but the receipt of such sums shall not, in the absence of such direction, impose any duty upon Mortgagee to disburse the same or relieve Mortgagor from its covenants to pay said obligations or to keep the premises insured. Mortgagee may, from time to time, establish reasonable service charges for the collection and disbursement of premiums on package-type insurance policies. Mortgagee shall not, whether or not service charges are imposed, be subject to any liability for failure to transmit any premiums to any insurer or by reason of any loss growing out of any defect in any insurance policy. At Mortgagee's option, Mortgagee may apply all loan trust funds directly to the payment of the principal balance then unpaid on the indebtedness secured hereby; if Mortgagee elects so to do, Mortgagee is authorized to pay taxes, insurance premiums on the mortgaged property and all other charges which would otherwise be payable from the loan trust funds, when the same become due and payable, and Mortgagee may then add the amount of any such payment to the principal balance then unpaid on the indebtedness secured hereby, each such payment to bear interest as provided in the promissory note mentioned hereinabove.

2. That Mortgagor will not commit or permit strip or waste of the said premises, or any part thereof; that Mortgagor will keep the real and personal property hereinabove described in good order and repair and in tenantable condition; that Mortgagor will promptly comply with any and all municipal and governmental rules and regulations with reference thereto; that Mortgagor will not cut or permit the cutting or removal of any timber without the written consent of Mortgagee, that if any of the said property be damaged or destroyed by any cause, Mortgagor will immediately reconstruct or repair the same so that, when completed, it shall be worth not less than the value thereof at the time of such loss or damage; provided, that if such loss or damage shall be caused by a hazard covered by insurance payable to Mortgagee, the obligation of the Mortgagor to repair or reconstruct shall not arise unless the Mortgagee shall consent to the application of the insurance proceeds to the expense of such reconstruction or repair.

3. That it will, at its own cost and expense, keep the building or buildings now or hereafter upon said premises, together with all personal property covered by the lien hereof,

insured against loss by fire and against loss by such other hazards as the Mortgagee may from time to time require, in one or more insurance companies satisfactory to or designated by the Mortgagee in an aggregate amount not less than the amount of the indebtedness hereby secured (unless the full insurable value of such building or buildings is less than the amount hereby secured, in which event the Mortgagor shall insure to the amount of the full insurable value); that all policies of insurance upon said premises, including policies in excess of the amount hereinabove mentioned and policies against other hazards than those required, shall contain such provisions as the Mortgagee shall require and shall provide, in such form as the Mortgagee may prescribe, that loss shall be payable to the Mortgagee; that all such policies and receipts showing full payment of premiums therefor shall be delivered to and retained by the Mortgagee during the existence of this mortgage; that at least 5 days prior to the expiration of any policy or policies it will deliver to the Mortgagee satisfactory renewals thereof together with premium receipts in full; that if any policy or policies shall impose any condition upon the liability of the insurer or shall contain any "average clause" or other provision by which the insurer may be liable for less than the full amount of the loss sustained, it will, as often as the Mortgagee may require, provide the Mortgagee with all such evidence as it may request concerning the performance of such condition or the existence of any facts or the value of the property insured and, if it shall appear to the Mortgagee that the insurance is prejudiced by the acts or omissions of the Mortgagor or that the coverage is inadequate, the Mortgagor will do such acts and things and obtain such further insurance as the Mortgagee may require; that the Mortgagee may, at its option, require the proceeds of any insurance policies upon the said premises 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.

4. That it will execute or procure such further assurance of its title to the said property as may be requested by the Mortgagee.

5. That in case the Mortgagor shall fail, neglect or refuse to do or perform any of the acts or things herein required to be done or performed, the Mortgagee may, at its option, but without any obligation on its part so to do, and without waiver of such default, procure any insurance, pay any taxes or liens or utility charges, make any repair, or do any other of the things required, and any expenses so incurred and any sums so paid shall bear interest at 8% per annum, or at the rate of interest set forth in the note mentioned above, whichever is greater, and shall be secured hereby.

6. That it will not, without the prior written consent of Mortgagee, transfer its interest in said premises or any part thereof, whether or not the transferee assumes or agrees to pay the indebtedness hereby secured. Upon any application for Mortgagee's consent to such a transfer, Mortgagee may require from the transferee such information as would normally be required if the transferee were a new loan applicant. Mortgagee shall not unreasonably withhold its consent. As a condition of its consent to any transfer, Mortgagee may, in its discretion, impose a service charge not exceeding one percent of the original amount of the indebtedness hereby secured and may increase the interest rate on the indebtedness hereby secured by not more than one percent per annum.

7. That, if any default be made in the payment of the principal or interest of the indebtedness hereby secured or in the performance of any of the covenants or agreements of this mortgage, the Mortgagee may, at its option, without notice, declare the entire sum secured by this mortgage due and payable and foreclose this mortgage.

8. That, in the event of the institution of any suit or action to foreclose this mortgage, the Mortgagor will pay such sum as the trial court and any appellate court may adjudge reasonable as attorney's fees in connection therewith and such further sums as the Mortgagee shall have paid or incurred for costs and disbursements in such suit or action, extensions of abstracts or title searches or examination fees in connection therewith, whether or not final judgment or decree therein be entered and all such sums are secured hereby and shall bear interest from the date paid or incurred by Mortgagee or from the date of judgment, whichever occurs first, at the rate set forth in the promissory note mentioned above; that in any such suit, the court may, upon application of the plaintiff and without regard to the condition of the property or the adequacy of the security for this indebtedness hereby secured and without notice to the Mortgagor or any one else, appoint a receiver to take possession and care of all said mortgaged property and collect and receive any or all of the rents, issues and profits which had theretofore arisen or accrued or which may arise or accrue during the pendency of such suit; that any amount so received shall be applied toward the payment of the debt secured hereby, after first paying therefrom the charges and expenses of such receivership, but until a breach or default by the Mortgagor in one or more of its covenants or agreements herein contained, it may remain in possession of the mortgaged property and retain all rents actually paid to and received by him prior to such default.

9. The word "Mortgagor", and the language of this instru-

ment 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. Masculine pronouns include feminine and neuter. All of the covenants of the Mortgagor shall be binding upon its heirs, executors, administrators, successors and assigns and inure to the benefit of the successors and assigns of the Mortgagee. In the event of any transfer of the property herein described or any part thereof or any interest therein, whether voluntary or involuntary or by operation of law, the Mortgagee may, without notice to the Mortgagor or any one else, once or often, extend the time of payment or grant renewals of indebtedness hereby secured for any term, execute releases or partial releases from the lien of this mortgage or in any other respect modify the terms hereof without thereby affecting the personal primary liability of the Mortgagor for the payment of the indebtedness hereby secured. No condition of this mortgage shall be deemed waived unless the same be expressly waived in writing by the Mortgagee. Whenever any notice, demand, or request is required by the terms hereof or by any law now in existence or hereafter enacted, such notice, demand or request shall be sufficient if personally served on one or more of the persons who shall at the time hold record title to the property herein described or if enclosed in a postpaid envelope addressed to one or more of such persons or to the Mortgagor at the last address actually furnished to the Mortgagee or at the mortgaged premises and deposited in any post office, station or letter box.

BATSELL BROS. OIL CO., INC.

BY: Larry D. Batsell  
Larry D. Batsell, President

By Richard R. Batsell  
Richard R. Batsell, Vice President

BATSELL BROS. OIL CO., a Partnership

By Larry D. Batsell  
Larry D. Batsell, Individually & as Partner

BY: Richard R. Batsell  
Richard R. Batsell, Individually & as Partner

(Corporate Seal)

STATE OF OREGON

County of Klamath } ss.

February 16 A. D. 19 83

Personally appeared Larry D. Batsell

and Richard R. Batsell

who being duly sworn, did say that they are President

and Vice President

, respectively of Batsell Bros. Oil Co., Inc.; also Larry

D. and Richard R. Batsell, individually and as partners of Batsell Bros. Oil Co., a Partnership

and that the seal affixed to the foregoing instrument, if any, is the corporate seal of said corporation and that said instrument was signed in behalf of said corporation by authority of its board of directors and Larry D. Batsell and Richard R. Batsell

acknowledged said instrument to be its voluntary act and deed.

Before me: Return to: Western Bank  
Klamath Falls Branch  
P. O. Box 669  
Klamath Falls, OR 97601

(Notary Seal)

Caroline H. Marshall  
Notary Public for Oregon.

My Commission Expires: 2-9-86

Legal Description Cont.

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An easement and right of way over and across that certain property situate, lying and being in the County of Klamath, State of Oregon, more particularly described as: All that portion of Lot 70 of ENTERPRISE TRACTS, Klamath County, Oregon, described as follows: Beginning at a point in the South line of Sixth Street at its intersection with a North and South line 390.0 feet West of the East line of Lot 70; thence South 706.5 feet; thence West 17.5 feet; thence North along a North and South line 407.5 feet West of the East line of Lot 70 a distance of 718.43 feet to the intersection of said line with the South line of Sixth Street; thence South-east along said street line 21.2 feet to the Point of Beginning, for the purpose of ingress and egress from that certain parcel of land described in Parcel 1 herein.

PARCEL 3:

Lots 1, 2, and 3, Block 17, INDUSTRIAL 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.

PARCEL 4:

A tract of land situated in the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 7, Township 38 South Range 9 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at an iron pin on the Westerly Boundary of the New Dalles-California Highway, said point being South 89° 49' East 799.0 feet to the Westerly boundary of said highway and South 11° 36' East along said boundary 1056.29 feet from the West quarter corner of said Section 7; thence North 11° 36' West along the Westerly boundary of said Highway 100 feet; thence South 78° 24' West, 27 feet; thence South 11° 36' East 13 feet; thence South 78° 24' West 73.15 feet; thence South 11° 36' East 87 feet to an existing iron monument, which is the most Southerly corner of that parcel of land described in Deed Volume 266, page 322, Deed Records of Klamath

MORTGAGE

TO

WESTERN BANK

When Recorded, Mail to

County, Oregon; thence North 69° 29' West, 26 feet to an iron pin; thence South 11° 36' East parallel with said highway 213.8 feet to an iron pin; thence North 78° 24' East 122 feet to an iron pin on the Westerly boundary of said Highway; thence North 11° 36' West along said boundary 200 feet, more or less, to the point of beginning.

PARCEL 5:

Together with a perpetual easement and right of way over the following described strip of land: Beginning at a point in the Northwest quarter of the Southwest quarter of Section 7, Township 38 South, Range 9, East of the Willamette Meridian, Klamath County, Oregon, which point is on the Westerly right of way boundary of the presently located Dalles-California Highway, which point of beginning is South 89° 49' East 799 feet to the Westerly boundary of said highway, and thence South 11° 36' East along said Westerly boundary a distance of 956.29 feet from the one-quarter corner common to said Section 7, and Section 12, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, said point of beginning being the Northeast corner of that property described in Deed Volume 294, page 426, Records of Klamath County, thence South 78° 24' West 27 feet; thence North 11° 36' West parallel to said Highway 90 feet; thence North 78° 24' East 27 feet to the Highway boundary line; thence South 11° 36' East along said Highway boundary line to the point of beginning.

STATE OF OREGON; COUNTY OF KLAMATH; ss.  
I hereby certify that the within instrument was received and filed for record on the

16 day of Feb. A.D., 1983 at 1:54 o'clock P.M., and duly recorded in  
Vol M83, of Mtge on page 2509.  
Fee \$ 16.00

EVELYN DEHN

CLERK

By *[Signature]* deputy

28 9-74