

29721

Vol. M83 Page 18217

ASSIGNMENT AND MORTGAGE

DATE: ~~September~~ OCTOBER 13, 1983

PARTIES: DONALD E. JOHNSON and MURIEL A. JOHNSON,  
husband and wife  
4748 Driftwood Dr.  
Klamath Falls, OR 97601

Assignor-Mortgagor

SOUTH VALLEY STATE BANK, an Oregon Banking  
Corporation  
5215 South Sixth Street  
Klamath Falls, OR 97601

Assignee-Mortgagee

R E C I T A L S:

A. The Assignor-Mortgagor has heretofore borrowed funds from Assignee-Mortgagee in the name of DON E. JOHNSON CONSTRUCTION, INC., an Oregon Corporation, and in consideration of said loan has personally guaranteed said loan and entered into a Hypothecation Agreement on December 15, 1980.

B. In consideration of the above-mentioned loan, the Assignor-Mortgagor assigned to the Assignee-Mortgagee the collateral hereinafter described by an assignment dated December 15, 1980, recorded February 8, 1983 in Volume M-83 at page 2059 of Records of Klamath County, Oregon.

C. The parties hereto, without any intention of creating a new obligation or a new security for the existing obligation, desire to enter into this Assignment and Mortgage to more clearly define the rights and liabilities of the parties hereto and the parties agree as follows:

AGREEMENTS:

SECTION 1. ASSIGNMENT:

1.1 For value received by Assignors from Assignee, Assignors hereby grant, bargain, sell and convey to Assignee, its successors and assigns, all of Assignor's right, title and interest in the following interest in real property:

Contract, including the terms and provisions thereof, dated July 9th, 1979, recorded September 26, 1979 in Book M-79 at page 22766 in the office of the Klamath County Clerk, made and executed by Donald E. Johnson and Muriel A. Johnson, husband and wife, as Sellers, and Scott A. Reed and Donna M. Reed, husband and wife, as Buyers, concerning the following described real property:

Beginning at a point on the North right of way line of Midland Road from which the Southwest corner of said Section 34 bears the following two bearings and distances: S89°54'58"W 117.00 feet, S00°10'55"E 30.00 feet; thence from said point of beginning N89°54'58"E along the North right of way of said Midland Road 203.00 feet; thence N00°10'55"W 429.16 feet to a 5/8" iron pin; thence S89°54'58"W 203.00 feet to a 5/8" iron pin; thence S00°10'55"E 429.16 feet to the point of beginning, containing 2.00 acres more or less.



1.2. The Assignors warrant that the amount of \$48,929.28 is now due to them under the encumbrance and that the Assignors will not accept any prepayments or pay-offs upon said encumbrance without applying the excess proceeds to the obligation of the Assignee herein.

1.3 The Assignors appoint the Assignee their attorney-in-fact with full power of substitution to enforce the obligations of the above-mentioned interests in real property and to collect the amounts due thereunder and apply the same to the obligation of the Assignors herein without prejudice to the other rights of the Assignee herein.

#### SECTION 2. CONVEYANCE:

For value received by Mortgagors from Mortgagee, Mortgagors hereby mortgage, grant, bargain, sell and convey to Mortgagee, its successors and assigns, the following described real property, situated in the County of Klamath, State of Oregon, to-wit:

Beginning at a point on the North right of way line of Midland Road from which the Southwest corner of said Section 34 bears the following two bearings and distances: S89°54'58"W 117.00 feet, S00°10'55"E 30.00 feet; thence from said point of beginning N89°54'58"E along the North right of way of said Midland Road 203.00 feet; thence N00°10'55"W 429.16 feet to a 5/8" iron pin; thence S89°54'58"W 203.00 feet to a 5/8" iron pin; thence S00°10'55"E 429.16 feet to the point of beginning, containing 2.00 acres more or less.

together with the appurtenances now or hereafter belonging to the property, and all the rents, issues and profits arising or to arise therefrom. All property subject to this Mortgage is hereinafter referred to as the "Mortgaged Premises".

#### SECTION 3. PURPOSE:

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained and contained in any loan agreement, security agreement or other agreement between Mortgagors and Mortgagee, and to secure the payment of a loan or loans in the sum of Twenty-five Thousand Nine Hundred Fifty-eight and 43/100ths (\$25,958.43) DOLLARS, as evidenced by a promissory note or notes and Extension Agreement dated April 26, 1983 held by the Mortgagee, together with interest payable on the unpaid balances thereof at the rates specified in the notes or at such other rates prescribed from time to time by Mortgagee in accordance with law and agreement with Mortgagor, any and all renewals or extensions thereof. All covenants and provisions of this Mortgage shall bind the successors and assigns of Mortgage and shall inure to the benefit of the successors and assigns of Mortgagee.

#### SECTION 4. WARRANTY OF TITLE

At the time of execution and delivery of this Mortgage, Mortgagors are the owners of the Mortgaged Premises in fee simple. Mortgagors have the right and authority to mortgage the Mortgaged Premises as provided in this Mortgage, and the Mortgaged Premises are free and clear of liens and encumbrances. Mortgagors will defend Mortgagee's rights against any liens and encumbrances other than those listed in this Mortgage.

## 2. ASSIGNMENT AND MORTGAGE



### SECTION 5. PAYMENT AND PERFORMANCE:

Mortgagors will pay, when due, the indebtedness secured by this Mortgage in accordance with the terms thereof. Mortgagors will strictly perform all obligations of this Mortgage and of any loan agreement or security agreement executed in connection with the indebtedness secured by this Mortgage. Mortgagors will promptly comply with all existing or future laws, orders and regulations of all state, federal, municipal and local governments or any similar bodies affecting the mortgaged premises or its use.

### SECTION 6. ASSIGNMENT OF ISSUES AND PROFITS:

Mortgagors hereby assign and transfer to Mortgagee the issues and profits, together with full power and authority to demand, sue for and collect the same in the name of Mortgagors, or in its own name, and to take possession of and manage the Mortgaged Premises or to cause a receiver to be appointed for such purpose and apply the income therefrom, after the costs of collection and management, to the reduction of the indebtedness secured hereby. The Mortgagors, by this Agreement, grant to the Mortgagee full power of attorney to sign their name upon any escrow instructions which the Mortgagee deems necessary or advisable to perfect its interest in the collateral above described.

### SECTION 7. DEFAULT:

7.1. Events of Default: The occurrence of any one or more of the following events shall constitute a default hereunder:

- (a) Mortgagor's default in the timely payment of any indebtedness to Mortgagee when due;
- (b) Mortgagor's failure to perform or observe all the provisions of this Mortgage;
- (c) The happening of an event of default under any other agreement or security instrument between Mortgagors and Mortgagee;
- (d) Mortgagor's insolvency or inability to pay their debts as they mature or Mortgagor's assignment for the benefit of creditors or filing of a voluntary petition in bankruptcy, or a voluntary petition seeking reorganization, or effecting a plan or other arrangement with creditors, or filing an answer consenting to or taking any other action indicating acquiescence in any involuntary petition pursuant to, or purporting to be pursuant to, any bankruptcy, reorganization or insolvency laws of any jurisdiction, or adjudication of Mortgagors as bankrupt or insolvent by any court of competent jurisdiction or appointment of a receiver for any substantial portion of Mortgagor's property.
- (e) Sale or other transfer of the Mortgaged Premises, or any part thereof, without the prior written consent of Mortgagee.

7.2. Remedies on Default. If any default occurs, Mortgagee may, at its' option, declare the entire unpaid balance of principal and accrued interest secured by this Mortgage immediately due and payable, together with any prepayment penalties imposed by any agreement or security agreement between Mortgagors and Mortgagee, and foreclosure proceedings may be immediately commenced. The failure of Mortgagee to exercise any option given hereunder shall not be taken or deemed a waiver of its right to exercise its option as to any past or subsequent violation of any covenants or stipulations.

### 3. ASSIGNMENT AND MORTGAGE



In addition to all other remedies provided herein, or by law, the Mortgagee, under the Assignment provisions of this agreement, may notify the payees under the obligations assigned to commence making payment to the Mortgagee.

#### SECTION 8. ATTORNEY FEES AND OTHER COSTS:

In the event suit or action is begun to foreclose this Mortgage, Mortgagors will pay, in addition to the costs and disbursements allowed by law, such sum as the court may adjudge reasonable attorney fees in such suit or action, or any appeal therefrom. Mortgagors will also pay such sums as the court may adjudge reasonable for the necessary examination and search of the public records respecting the title to the mortgaged premises. The plaintiff in such suit or action may take judgment therein for such sums. Mortgagors will pay to Mortgagee all sums, including costs, expenses and reasonable agent and attorney fees, which Mortgagee may expend or become obligated for in any proceedings, legal or otherwise, involving the title to the mortgaged premises, or to establish, protect or sustain the lien of this Mortgage, or its priority, or in defending against liens, claims, rights, estates, easements or restrictions, or for evidences of title to the mortgaged premises. Interest shall be paid to Mortgagee on all such sums as the rate then payable on the indebtedness secured hereby. This Mortgage shall stand as security for payment of these sums and interest in like manner and effect as for payment of the indebtedness secured.

#### SECTION 9. MISCELLANEOUS:

9.1 Terminology: 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.

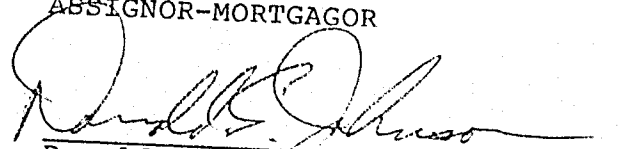
9.2. Nonwaiver: No condition of this Mortgage shall be deemed waived unless expressly waived in writing by Mortgagee.

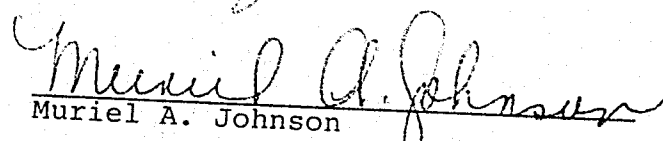
9.3 Notices: Whenever any notice, demand or request is required by the terms of this Mortgage or by any law now in existence or hereafter enacted, the notice, demand or request shall be sufficient if enclosed in a post paid envelope, addressed to Mortgagors at the last address actually furnished to Mortgagee, or at the Mortgaged Premises, and deposited in any post office station or letter box.

9.4 Applicable Law. This Mortgage shall be governed by the law of the State of Oregon and any questions arising hereunder shall be construed or determined according to such laws.

THE PARTIES have executed this Agreement as of the date first written.

ASSIGNOR-MORTGAGOR

  
Donald E. Johnson

  
Muriel A. Johnson



STATE OF OREGON

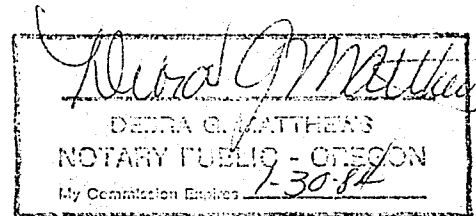
County of Klamath

18221

) OCT 13, 1983

Personally appeared the above-named Donald E. Johnson and Muriel A. Johnson, husband and wife, and acknowledged the foregoing instrument to be their voluntary act. Before me:

Debra G. Matthews  
Notary Public for Oregon  
My Commission expires: 1-30-84



STATE OF OREGON, )  
County of Klamath )  
Filed for record at request of

on this 21st day of Oct A.D. 19 83  
at 9:09 o'clock A M, and duly  
recorded in Vol. M83 of Mortgages  
Page 18217

**EVELYN BIEHN**, County Clerk

By Pam L. Smith Deputy

Fee 20.00

AFTER RECORDING RETURN TO:  
William P. Brandsness  
411 Pine Street  
Klamath Falls, OR 97601

5. ASSIGNMENT AND MORTGAGE