

ASSIGNMENT AND MORTGAGE

DATE: December 20, 1983

PARTIES: ROBERT D. ELLIS and MARY JO ELLIS, husband and wife  
P. O. Box 37  
Keno, OR 97627

Assignor-Mortgagor

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

Assignee-MortgageeR E C I T A L S:

A. The Assignor-Mortgagor desires to borrow funds from Assignee-Mortgagee.

B. In consideration of the above-mentioned loan, the Assignor-Mortgagor agrees to assign to the Assignee-Mortgagee their interest in a certain mortgage hereafter described 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 a certain mortgage, including the terms and provisions thereof, executed by David M. Brollier and Carolyn S. Brollier, husband and wife, to Robert D. Ellis and Mary Jo Ellis, husband and wife, dated November 8, 1982, recorded November 9, 1982, in Volume M82 page 14925, Mortgage Records of Klamath County, Oregon, to secure the payment of \$39,000.00.

1.2. The Assignors warrant that the amount of \$36,746.61 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:

All that portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Sec. 34, Twp. 39 S.R. 9 E.W.M., described as follows:

Beginning at a point in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of said Sec. 34, from which the Southeast corner of said Section bears South



50°49' East 175 feet and South 38°11' East 993 feet; thence North 2°53' West 325 feet; thence North 11° East 530 feet, more or less, to the centerline of the U.S.R.S. C-4 Canal; thence North 88° West along the centerline of said C-4 Canal, 336.4 feet; thence through the arc of a 40° curve right 66.5 feet to a point bearing North 74°42' West 66.5 feet; thence North 61°23' West 202.5 feet; thence through the arc of a 40° curve right 143.8 feet to a point bearing North 32°00'38" West 140.6 feet; thence North 3°53' West 72.4 feet to a point in the West line of the NE¼SE¼ of said section from which the quarter corner common to Sections 34 and 35, said Township and Range, bears North 66°28' East 1449 feet; thence South along the West line of the E¼SE¼ of said Section 880 feet, more or less, to a point 1195 feet North of the Southwest corner of the SE¼SE¼ of said Section 34; thence East 38 feet; thence South 38°35' East 394.2 feet; thence North 88°47' East 285.8 feet, more or less, to the place of beginning. LESS AND EXCEPTING any rights of way for irrigation ditches, drain ditches and/or county roads.

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 and no/100ths (\$25,000.00) DOLLARS, as evidenced by a promissory note or notes 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 and any future advances made by Mortgagee to Mortgagor. 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.

### 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.

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## 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.

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

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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. Mortgagees 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

Robert D. Ellis

Mary Jo Ellis

STATE OF OREGON           )  
                                  ) December 20, 1983  
County of Klamath        )

Personally appeared the above-named Robert D. Ellis and MARY Jo Ellis, and acknowledged the foregoing instrument to be \_\_\_\_\_ voluntary act. Before me:

*Return: A.T.C.*

John C. Condit  
Notary Public for Oregon  
My Commission expires: 10-17-87

#### 4. ASSIGNMENT AND MORTGAGE

STATE OF OREGON: COUNTY OF KLAMATH: ss

I hereby certify that the within instrument was received and filed for record on the 22nd day of Dec. A.D., 1983 at 9:03 o'clock A M, and duly recorded in Vol M83, of Mortgages on page 21864.

EVELYN BIEHN, COUNTY CLERK

Fee \$ 16.00

by Paul Smith Deputy