

February 7

1984

Don Johnston and Son, a partnership - - - - -  
 Rt. 3, Box 399, Klamath Falls, Or. 97601  
 United States National Bank of Oregon, Mortgagee ("Lender") - - - - -  
 740 Main St., P.O. Box 789, Klamath Falls, Or. 97601  
 The Lender has loaned Don Johnston and Son, a partnership - - - - -  
 Three Hundred Two Thousand Four Hundred Seventy Seven Dollars & 67/100 and One Hundred Ninety  
 \$ 302,477.67 and \$197,686.00, which is repayable with interest according to the terms of a promissory note dated the  
 same as this mortgage, under which the final payment of principal and interest is due on or before 1 years from date. The term  
 "indebtedness" as used in this mortgage shall mean (a) the principal and interest payable under the note and under any extensions and  
 renewals of the note, (b) any future amounts, together with interest, that the Lender may in its discretion loan to Borrower or Mortga-  
 gor under this mortgage and any extensions and renewals, and (c) any sums paid or advanced by the Lender to discharge obligations of  
 Mortgagor as permitted under this mortgage, with interest.

To secure payment of the indebtedness and performance of all obligations of Mortgagor under this mortgage, Mortgagor mort-  
 gages to the Lender on the terms set out below the following property in Klamath County, State of Oregon

See Attached Exhibit I

together with all appurtenances, all existing or subsequently erected or affixed improvements or fixtures, and, unless this mortgage is being given to secure an extension of consumer credit requiring disclosures under the Federal Truth-in-Lending Act, Mortgagor also hereby grants to Lender a Uniform Commercial Code security interest in all equipment, furnishings and other articles of personal property now or subsequently located on or used in connection with the property; all of the foregoing is collectively referred to as the Property.

### 1. Possession and Maintenance of the Property.

1.1 Until in default, Mortgagor shall remain in possession and control of the Property and to the extent that the Property consists of commercial improvements shall be free to operate and manage the Property and receive the proceeds of operation. The Property shall be maintained in good condition at all times, Mortgagor shall promptly make all necessary repairs, replacements and renewals so that the value of the Property shall be maintained, and Mortgagor shall not commit or permit any waste on the Property. Mortgagor shall comply with all laws, ordinances, regulations and private restrictions affecting the Property.

1.2 To the extent that the Property constitutes commercial property or a farm or orchard, Mortgagor shall operate the Property in such manner as to prevent deterioration of the land and improvements including fences, except for reasonable wear and tear from proper use, and to the extent that the land is under cultivation, shall cultivate or otherwise operate the Property according to good husbandry.

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

### 2. Completion of Construction.

If some or all of the proceeds of the loan creating the indebtedness are to be used to construct or complete construction of any improvement on the Property, the improvement shall be completed on or before \_\_\_\_\_ from the date of this mortgage and Mortgagor shall pay in full all costs and expenses in connection with the work.

### 3. Taxes and Liens.

3.1 Mortgagor shall pay before they become delinquent all taxes and assessments levied against or on account of the Property, and shall pay as due all claims for work done on or for services rendered or material furnished to the Property. Special assessments shall be paid currently, without deferral, unless the lien for deferred assessments is subordinate to the interest of Lender under this mortgage, or Lender gives its prior written consent to the deferral. Mortgagor shall maintain the Property free of any liens having priority over or equal to the interest of the Lender under this mortgage, except for "Permitted Encumbrances" as defined in 8.1, the lien of taxes and assessments not delinquent, and except as otherwise provided in 3.2.

3.2 Mortgagor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as the Lender's interest in the Property is not jeopardized.

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

ardized. If a lien arises or is filed as a result of nonpayment, Mortgagor shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Mortgagor has notice of the filing, secure the discharge of the lien or deposit with the Lender cash or a sufficient corporate surety bond or other security satisfactory to the Lender in an amount sufficient to discharge the lien plus any costs, attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien.

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

### 4. Insurance.

4.1 Mortgagor shall carry such insurance as the Lender may reasonably require. This shall include insurance on the Property against fire, additional risks covered by a standard endorsement for extended coverage, and such other risks as may be specified by the Lender, including without limitation flood and war risks. Insurance on the Property shall be carried in companies and under policies approved by the Lender and shall be for an amount equal to the remaining unpaid portion of the indebtedness or the full insurable value of the Property, whichever is less, and an amount sufficient to comply with any co-insurance provision in any policy.

4.2 All policies of insurance on the Property shall bear an endorsement in a form satisfactory to the Lender making loss payable to the Lender and shall be deposited with the Lender. In the event of loss, Mortgagor shall immediately notify the Lender, who may make proof of loss if it is not made promptly by Mortgagor. Proceeds shall be paid directly to the Lender who may compromise with any insurance company and make a final settlement which shall be binding upon Mortgagor. The Lender may, at its election, apply the proceeds to the reduction of the indebtedness or the restoration or repair of the Property.

4.3 At least 30 days prior to the expiration of any policy, a satisfactory renewal or substitute policy shall be secured by Mortgagor.

### 5. Reserves; Mortgage Insurance Premiums.

5.1 If allowed by law, and if Mortgagor and Lender do not otherwise expressly agree in writing, Lender may require Mortgagor to maintain reserves for payment of taxes (including special assessments and other charges against the Property by governmental or quasi-governmental bodies) or premiums on property insurance or both. The reserves shall be created by payment each month to the Lender of an amount determined by the Lender to be sufficient to produce by the date they are due amounts equal to the estimated taxes and insurance premiums to be paid. If at the time that payments are to be made the reserve for either taxes or insurance premiums is insufficient, Mortgagor shall upon demand pay such additional sum as the Lender shall determine to be necessary to cover the required payment.

5.2 If the Lender carries mortgage (default) insurance covering the repayment of all or any part of the indebtedness, the premiums for such insurance shall be paid by the Mortgagor, and if allowed by law, the Lender may require Mortgagor to maintain a reserve for

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 by 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: \_\_\_\_\_

\* See Below

(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:

(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.

\*8.1 Mortgage dated 10-7-77 in favor of United States of America acting through the Farmers Home Administration

18. The term "Indebtedness" as used in this mortgage shall mean (a) the principal and interest payable under the notes referred to above, (b) any future amounts that the Lender may in its discretion loan to Mortgagor plus interest thereon, and (c) any sums paid or advanced by the Lender to discharge the obligations of the Mortgagor as permitted under this mortgage.

#### INDIVIDUAL ACKNOWLEDGMENT

STATE OF OREGON )  
 ) ss.  
County of \_\_\_\_\_, 19\_\_\_\_  
Personally appeared the above-named \_\_\_\_\_  
and acknowledged the foregoing instrument to be \_\_\_\_\_ voluntary act.

Before me:

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

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.

Don Johnston and Son, a partnership

*Don Johnston*

*Gwen Johnston*

*Scott Johnston*

#### CORPORATE ACKNOWLEDGMENT

STATE OF OREGON )  
 ) ss.  
County of \_\_\_\_\_, 19\_\_\_\_  
Personally appeared \_\_\_\_\_, and  
\_\_\_\_\_, who, being sworn,  
stated that \_\_\_\_\_ he, the said \_\_\_\_\_ is a  
\_\_\_\_\_, and \_\_\_\_\_ he, 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 )  
 ) ss.  
County of Klamath, 1984  
THIS CERTIFIES that on this 7 day of July, 1984, personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Gwen Johnston, Scott Johnston, Don Johnston known to me to be the persons named in and who executed the foregoing instrument and who are known to me to be member(s) of the partnership of Don Johnston and Son acknowledged to me that they 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:

*William O. Maguire*  
\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: 4-1-87

# Mortgage

TO

UNITED STATES NATIONAL BANK

OF OREGON Mortgagee

STATE OF OREGON.

ss.

County of

I certify that the within instrument was received

for the record on the

day of 19

at o'clock M. and recorded

in Book on page Record

of Mortgages of said County.

Witness my hand and seal of County attired.

County Clerk (Recorder)

By

Deputy

AFTER RECORDING RETURN TO

UNITED STATES NATIONAL  
BANK OF OREGON MORTGAGEE

BRANCH

ADDRESS

OREGON

for the attention of:

Department

DESCRIPTIONPARCEL 1

The SE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30; The N $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31, The W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, all that portion of the NW $\frac{1}{4}$  of Section 32 lying Northerly and Westerly of the Greensprings Highway and Westerly of that parcel of land beginning at the intersection of a well-established fence line and the North line of SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 which point is approximately 368 feet West of the Northeast corner of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; thence West to an intersection with a line running parallel with and distant 206 feet measured at right angles Westerly from said fence line; thence Southeasterly along said line parallel with the fence line, 3520 feet, more or less, to the Northerly line of the State Highway; thence Northeasterly along the Northerly line of said Highway to an intersection with said fence line; thence Northwesterly along the fence line to the place of beginning, conveyed by Ralph A. Johnston et ux., to Erwin Heim et ux., by deed recorded on page 214 of Volume 245 of Deeds, Records of Klamath County, Oregon, also all that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 lying Westerly of said parcel conveyed to Heims; all in Township 39 South, Range 8 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

ALSO the following described portion of NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32, described as follows: Beginning at the  $\frac{1}{4}$  section corner on the West line of said Section 32; thence South along the Section line 870 feet; thence East 879 feet, more or less, to the West line of the State Highway; thence Northerly along said line of Highway to a point which is 1100 feet East and 206 feet South of said  $\frac{1}{4}$  section corner; thence North 206 feet; to the North line of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; thence West along said line 1100 feet to the said  $\frac{1}{4}$  section corner.

PARCEL 2

All that portion of Section 32, Township 39 South, Range 8 East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows:

Beginning at a point on a line between Sections 31 and 32, which is 870 feet South of the  $\frac{1}{4}$  corner common to Sections 31 and 32; thence South along said Section line a distance of 97.56 feet, to the Northwest corner of the D. J. Puckett property; thence East 879 feet, more or less, to the West line of the right of way of Oregon State Highway No. 66; thence North along the West line of said right of way 97.56 feet; thence West 879 feet to the point of beginning.

EXCEPTING from the above described property portion conveyed to the United States government for canal and laterals by deed dated December 23, 1907, recorded December 24, 1907, on page 410 of Volume 23 of Deeds, Records of Klamath County, Oregon. ALSO EXCEPTING from the above described property the E $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, Township 39 South, Range 8 East of the Willamette Meridian.

Don Johnston and Son, a partnership

BY: *Don Johnston*  
*Erwin Johnston*  
*Scott Johnston*

STATE OF OREGON: COUNTY OF KLAMATH:ss

I hereby certify that the within instrument was received and filed for record on the 17th day of February A.D., 1984 at 1:00 o'clock P.M. and duly recorded in Vol. M34, of Mortgages on page 2553.

EVELYN BIEHN, COUNTY CLERK

by *[Signature]* Deputy

Fee \$ 20.00