

MORTGAGE

DATE: October 25, 1984

PARTIES: DENNIS D. DAVIS and PATRICIA R. DAVIS, husband and wife
LARRY L. PEDEN and JUDITH L. PEDEN, husband and wife
11630 Highway 39
Klamath Falls, OR 97603

MORTGAGOR

ROBERT H. MITCHELL and N. GAIL MITCHELL,
husband and wife
7505 Kress Drive
Klamath Falls, OR 97603

MORTGAGEE

The parties agree as follows:

AGREEMENTS

SECTION 1. CONVEYANCE

For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the following described real property, situated in the County of Klamath, State of Oregon, to-wit:

A parcel of land situated in the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 1, Township 40 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at the East one-quarter corner of Section 1; thence North 89°45'40" West 30.00 feet to a 3/4" iron rod at the intersection with the Westerly right of way line of Oregon State Highway 39; thence North 00°15'29" East 229.06 feet along the Westerly right of way line of said Highway 39 to a 5/8" iron rod, being a corner of said parcel, the true point of beginning; thence North 89°45'40" West 950.84 feet to a 5/8" iron rod; thence South 00°15'29" West 229.06 feet to a 5/8" iron rod at the intersection with the center one-quarter section line of Section 1; thence North 89°45'40" West 1663.99 feet along the center one-quarter section line of Section 1 to the center one-quarter corner of Section 1 marked by a 5/8" iron rod; thence North 00°04'23" East 664.33 feet along the center one-quarter section line of Section 1 to a point; thence South 89°46'18" East 2616.98 feet to a point at the intersection with the Westerly right of way line of said Highway 39; thence South 00°15'29" West 435.75 feet along the Westerly right of way line of said Highway 39 to the point of true beginning.

The basis of bearing is Minor Land Partition No. 79-82 on file in the office of the County Clerk of Klamath County, Oregon.

EXCEPTING THEREFROM a 40 foot wide strip of K.I.D. Drain over and across the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 1, Township 40 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

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

1. MORTGAGE

RETURN TO:
ASPEN TITLE
600 Main Street
Klamath Falls, OR 97601

hereinafter referred to as the mortgaged premises. Until default, Mortgagor may remain in possession of the mortgaged premises, and may manage and collect all rents and revenues from the mortgaged premises.

SECTION 2. 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 Mortgagor and Mortgagee, and to secure payment of a loan in the sum of Thirty-Eight Thousand One Hundred Five and 77/100ths Dollars (\$38,105.77), evidenced by a promissory note from Mortgagor to Mortgagee; dated the 22nd day of October, 1984 in the principal amount of \$38,105.77, together with interest payable on the unpaid balances thereof at the rate specified in the note. All covenants and provisions of this Mortgage shall bind the successors and assigns of Mortgagor and shall inure to the benefit of the successors and assigns of Mortgagee.

SECTION 3. WARRANTY OF TITLE

At the time of execution and delivery of this Mortgage, Mortgagor is the owner of the mortgaged premises in fee simple, Mortgagor has 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, except a certain Trust Deed, including the terms and provisions thereof, with interest thereon and such future advances as may be provided therein given to secure the payment of \$48,000.00 dated September 12, 1975, recorded September 12, 1975 in Book M-75 at page 10892 in the Records of the County Clerk of the County of Klamath, wherein Robert H. Mitchell and N. Gail Mitchell, husband and wife, are Trustors, William Ganong, Jr. is the Trustee, and First Federal Savings and Loan Association of Klamath Falls, Oregon, a corporation, is Beneficiary, which the Mortgagor expressly assumes and agrees to pay according to the terms thereof and to save the Mortgagee harmless thereon. If Mortgagor defaults on any provision of this Trust Deed, the default will also be considered a default under this Mortgage and thereby be subject to all of the rights and remedies of the Mortgagee as set out herein.

SECTION 4. PAYMENT AND PERFORMANCE

Mortgagor will pay, when due, the indebtedness secured by this Mortgage in accordance with the terms thereof. Mortgagor 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. Mortgagor 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 their use.

SECTION 5. CHARGES AGAINST MORTGAGED PREMISES

5.1 Taxes and Utilities. Mortgagor will pay when due all taxes, assessments, water and other charges for utility services that may be levied, assessed or charged upon or against the mortgaged premises, or any part thereof. Upon request, Mortgagor shall deliver to Mortgagee evidence of payment of the taxes, assessments or other charges.

5.2 Liens and Encumbrances. Mortgagor will promptly pay and satisfy any construction liens or other encumbrances that might by operation of law or otherwise become a lien upon the

mortgaged premises, whether or not superior to the lien of this Mortgage. Mortgagor may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as Mortgagee's property interests are not jeopardized. If a lien is filed as a result of non-payment, Mortgagor shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien, or deposit with Mortgagee cash or a sufficient corporate surety bond or other security satisfactory to Mortgagee in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

5.3 Insurance and Other Charges. Mortgagor will pay when due all premiums upon insurance policies on the mortgaged property, all licenses or fees legally owing by it, and all rentals or other charges for the use of any leased ground or premises upon which any of the mortgaged premises may be located.

5.4 Failure to Pay. In case of default in payment of any charges Mortgagor is required to pay pursuant to this Mortgage, Mortgagee, its successors and assigns, may at its option pay any insurance premiums, or reinsure the mortgaged premises and pay all premiums therefor; and pay licenses, fees, rentals, charges, taxes and/or assessments due or claimed to be due under any legislative power or authority or under any valid contract; and any amounts so paid by Mortgagee shall become part of the principal debt; and amounts so paid by Mortgagee shall bear interest at the rate of 11% from the date of payment.

SECTION 6. CONDITION OF MORTGAGED PREMISES

6.1 Repairs and Maintenance. Mortgagor will keep all improvements erected on the mortgaged premises in good order and repair.

6.2 First-class Condition. Mortgagor will maintain the mortgaged premises in reasonable condition.

6.3 Waste. Mortgagor will not permit waste of the mortgaged premises or do or suffer anything to be done to depreciate or impair the value of the mortgaged premises during the life of this Mortgage.

6.4 Changes and Alterations. Mortgagor will not make any changes in or alterations to the improvements on the mortgaged premises which will materially decrease the value of the same. Before making any changes in or alterations to the improvements, Mortgagor shall give notice to Mortgagee of the nature and extent of the changes or alterations.

6.5 Removal of Improvements Prohibited. Mortgagor will not remove or permit to be removed the dwelling house from the mortgaged premises, without the prior written consent of Mortgagee.

6.6 Right of Inspection. Mortgagee shall have the right to enter upon the mortgaged premises at all reasonable times after 72 hours written notice to determine Mortgagor's compliance with this Mortgage.

SECTION 7. INSURANCE

7.1 Insurance Proceeds. Mortgagor will keep the buildings and improvements now erected, or which may hereafter be erected on the mortgaged premises insured against loss or damage by fire with extended coverage endorsement, written by a responsible insurance company or insurance companies satisfactory

to Mortgagee in an amount satisfactory to Mortgagee, naming Mortgagor and Mortgagee insured parties as their interest may appear, and will cause to be executed and attached to all policies of insurance issued thereon a clause in form satisfactory to Mortgagee, making loss payable to Mortgagee as its interest may appear. The policy or policies of insurance shall be delivered to Mortgagee and shall contain a provision requiring at least ten (10) days' notice to Mortgagee before cancellation. Mortgagor agrees to notify Mortgagee of any casualty affecting the mortgaged premises.

7.2 Disposition of Insurance Proceeds. If the property is damaged because of fire or other risk covered by insurance, Mortgagee shall apply the proceeds of the insurance against the cost of repair. Any amount not required for repair shall be paid to Mortgagee and applied against the payments last becoming due on the indebtedness secured. If the insurance proceeds are insufficient for repair, Mortgagor shall pay the difference and shall provide evidence of Mortgagor's ability to finance the difference, prior to disposition of the proceeds. If damage to the improvements is so extensive as to constitute total destruction, so that repair is not feasible, the insurance proceeds shall be paid to Mortgagee and applied against the payment last coming due on the indebtedness secured, and any excess over the balance thereof shall be paid to Mortgagor. Mortgagor hereby appoints Mortgagee agent to collect all amounts payable to Mortgagor under the policies. Amounts retained by Mortgagee, after the cost of collection, shall be applied to payment of the principal sum and interest thereon and other sums secured by this Mortgage.

SECTION 8. ASSIGNMENT OF ISSUES AND PROFITS

Mortgagor hereby assigns and transfers to Mortgagee the issues and profits, together with full power and authority to demand, sue for and collect the same in the name of Mortgagor, or in its own name, and to take possession of and manage the mortgaged premise 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. However, the right to collection and management shall not apply as long as this Mortgage is in good standing.

SECTION 9. ZONING

This instrument does not guarantee that any particular use may be made of the property described in this instrument. A buyer should check with the appropriate City or County Planning Department to verify approved uses.

SECTION 10. DEFAULT

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

- (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 Mortgagor and Mortgagee, or the default of the Mortgagor on the Trust Deed described in Section 3 hereinabove;

(d) Mortgagor's insolvency or inability to pay its 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 Mortgagor 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 premise or any part thereof without the prior written consent of Mortgagee.

10.2 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 Mortgagor 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.

SECTION 11. ATTORNEY FEES AND OTHER COSTS

In the event suit or action is begun to foreclose this Mortgage, Mortgagor will pay, in addition to the costs and disbursements allowed by law, such sum 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 for such sums. Mortgagor 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 at 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 12. MISCELLANEOUS

12.1 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.

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

12.3 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 postpaid envelope addressed to Mortgagor at the last address actually furnished to Mortgagee, or at the mortgaged premises, and deposited in any post office, station or letter box.

12.4 Time of Essence. Time is of the essence of this Mortgage.

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

The parties have executed this agreement as of the date first written above.

~~Robert H. Mitchell~~

Dennis D. Davis
Dennis D. Davis

~~NxxGailxxMitchell~~

Patricia R. Davis
Patricia R. Davis

MORTGAGEE

Larry L. Peden
Larry L. Peden

Judith L. Peden
Judith L. Peden

MORTGAGOR

STATE OF OREGON)

County of Klamath)

ss. _____, 1984

~~Personally appeared the above named Robert H. Mitchell and Gail Mitchell, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:~~

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)

County of Klamath)

ss. October 25
Klamath, 1984

Personally appeared the above-named Dennis D. Davis and Patricia R. Davis, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

Susan C. [Signature]
Notary Public for Oregon
My Commission expires: 6-21-88

STATE OF OREGON)

County of Klamath)

ss. October 25, 1984

Personally appeared the above-named Larry L. Peden and Judith L. Peden, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

Susan C. [Signature]
Notary Public for Oregon
My Commission expires: 6-21-88

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STATE OF OREGON: COUNTY OF KLAMATH:ss

I hereby certify that the within instrument was received and filed for record on the 25th day of October A.D., 19 84 at 3:37 o'clock P M, and duly recorded in Vol M84, of Mortgages on page 18357.

EVELYN BIEHN, COUNTY CLERK

Fee: \$ 28.00

by: Ross Smith, Deputy