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MORTGAGE — OREGON

Vol. 185 Page

9557

June 17, 19 85

Ronald C. McVay and Barbara A. McVay

HC Box 62, Malin, Oregon 97632

Mortgagor

Address

United States National Bank of Oregon

Mortgagee ("Lender")

740 Main Street, P.O. Box 789, Klamath Falls, Oregon 97601

Address

The Lender has loaned money or extended credit to McVay Farms

\* (Borrower)

which is repayable with interest according to the terms of the following described promissory note(s):

Note Date	Original Principal Balance	Current Principal Balance	Date Final Payment is Due
6-17-85	\$50,000.00	\$50,000.00	1-15-92

The term "Indebtedness" as used in this Mortgage shall mean (a) the principal and interest payable under the note(s) and under any number of extensions and renewals of the note(s), (b) any future amounts, (except any sums owed on a Visa account incurred for a personal, family, or household purpose) together with interest, that the Lender may in its discretion loan to Borrower or Mortgagor and any number of extensions and renewals, whether or not the future advances are related to any Indebtedness currently secured by this Mortgage by class or kind, whether or not the future advances are currently contemplated by the parties, or whether or not any note or other evidence of debt states that it is secured hereby, and (c) any sums paid or advanced by the Lender to discharge obligations of Mortgagor as permitted under this Mortgage, with interest. The interest rate, payment terms and balance due under the note(s) may be indexed, adjusted, renewed or renegotiated in accordance with the terms of the note(s) and on account of any extensions and renewals of the note(s).

To secure payment of the Indebtedness and performance of all obligations of Mortgagor under this Mortgage, Mortgagor, hereby mortgages to the Lender on the terms set out below the following property in the County of Klamath, State of Oregon,

The NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, Township 41 South, Range 12 East of the Willamette Meridian, EXCEPTING therefrom .9 acre for road as described in Klamath County Deeds, Volume 153 page 588, located in Section 9, Township 41 South, Range 12 East of the Willamette Meridian.

which has the address of HC Box 62, Malin, Oregon 97632

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. Mortgagor hereby assigns to Lender as additional security for the Indebtedness all present and future rents, leases, and profits from the Property.

### 1. Maintenance of the Property.

1.1 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, 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.

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, Mortgagor agrees:

2.1 To commence construction promptly and in any event within 30 days from the date of this instrument, and complete the same in accordance with any agreements relating to construction and plans and specifications satisfactory to Lender within 8 months of the date of this instrument;

2.2 To allow Lender to inspect said property at all times during construction;

2.3 To replace any work or materials unsatisfactory to Lender within 15 calendar days after written notice to the Mortgagor of such fact;

2.4 That work shall not cease on the construction of such improvements for any reason whatsoever for a period of 15 consecutive days.

### 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. 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

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may require Mortgagee to maintain a reserve for such purposes in the same manner as for taxes and property insurance, and subject to the same agreements.

5.3 If Mortgagee 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 Mortgagee 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. Mortgagee agrees that Lender may commingle reserve funds with other funds of Lender, and need not invest them for the benefit of Mortgagee. Mortgagee agrees that Lender need not pay Mortgagee interest on reserves, unless applicable statutes require payment of interest notwithstanding any contrary agreement.

**6. Expenditures by Lender.**

If Mortgagee shall fail to comply with any provision of this Mortgage, the Lender may, at its option, on Mortgagee'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 be 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 expenses 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 Mortgagee 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: Mortgage dated 1-30-85 U.S. National Bank, recorded 1-31-85 to secure payment of \$300,000.00 & \$100,000.00. ; (hereinafter referred to as "Permitted Encumbrances").

8.2 Mortgagee 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 Mortgagee's title or the interest of the Lender under this Mortgage, Mortgagee shall defend the action at Mortgagee's expense.

8.3 If any Permitted Encumbrance is a lien, Mortgagee 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 Mortgagee and the Lender in connection with the condemnation.

9.2 If any proceeding in condemnation are filed, Mortgagee shall promptly take such steps as may be necessary to defend the action and obtain the award. Mortgagee hereby assigns to Lender the net proceeds of any condemnation 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 property covered by a mortgage, which the taxpayer is authorized or required to deduct from payments on the mortgage.
- (c) A tax on premises covered by a mortgage chargeable against the mortgagee under the mortgage 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 Mortgagee under a mortgage.

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) Mortgagee may lawfully pay the tax or charge imposed by the state tax, and
- (b) Mortgagee 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. Due on Sale Clause.**

Mortgagee agrees that Lender may, at Lender's option, declare the entire Indebtedness immediately due and payable if all or any part of the Property, or an interest therein, is sold, transferred, further encumbered, or alienated. If Lender exercises the option to declare the entire Indebtedness immediately due and payable, Mortgagee agrees that Lender may use any default remedies permitted under this Mortgage and under applicable law. Mortgagee agrees that Lender may exercise Lender's rights under this Due-On-Sale provision each time all or any part of the Property, or an interest in the Property, is sold, transferred, further encumbered, or alienated whether or not Lender previously exercised Lender's rights under this or any other Due-On-Sale provision.

**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 Mortgagee shall join with the Lender in executing one or more financing statements under the Uniform Commercial Code and shall file the statement at Mortgagee'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. Default.**

The following shall constitute events of default:

- 13.1 Any portion of the Indebtedness is not paid when it is due.
- 13.2 Failure of Mortgagee 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.
- 13.3 Failure of Mortgagee to perform any other obligation under this Mortgage within 20 days after receipt of written notice from the Lender specifying the failure.
- 13.4 If this Mortgage secures a construction loan, any failure of Mortgagee or builder or any other person or entity 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 Lender specifying the failure.
- 13.5 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.
- 13.6 Either Mortgagee or Borrower become insolvent, file a voluntary petition in bankruptcy, become subject of an involuntary petition in bankruptcy, make an assignment for the benefit of creditors, or consent to the appointment of a receiver or trustee for any portion of the Property or all or a substantial part of Mortgagee's or Borrower's assets.
- 13.7 Default by Mortgagee or any predecessors in title of Mortgagee, as lessee or sublessee, under the terms of any lease or sublease of the Property to which Mortgagee is a party or through which Mortgagee's interest in the Property is derived.

**14. Release on Full Performance.**

If the Indebtedness is paid when due and Mortgagee otherwise performs all of its obligations under this mortgage and the notes, the Lender shall execute and deliver to Mortgagee 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.

**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 Mortgagee, 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 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) The right to obtain a deficiency judgment in the event the net sale proceeds of any foreclosure sale are insufficient to pay the entire unpaid Indebtedness.

(g) Any other right or remedy provided in this mortgage, the promissory notes evidencing the Indebtedness, any construction loan agreement, any other security document, or under the law.

15.2 In exercising its rights and remedies, 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.

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 highest rate as provided in any note from the date of expenditure until paid.

#### 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.

Ronald C. McVay  
Barbara A. McVay

#### INDIVIDUAL ACKNOWLEDGEMENT

STATE OF OREGON )  
 ) ss.  
County of Klamath ) June 17, 19 85  
Personally appeared the above-named Ronald C. McVay  
Barbara A. McVay and acknowledged the foregoing  
instrument to be their voluntary act.

Before me:

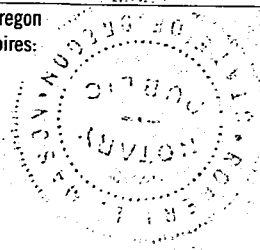
[Signature]  
Notary Public for Oregon  
My commission expires 4-17-87

#### CORPORATE ACKNOWLEDGEMENT

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:

[Signature]  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_



#### PARTNERSHIP ACKNOWLEDGMENT

STATE OF OREGON )  
 ) ss.  
County of \_\_\_\_\_ )  
THIS CERTIFIES that on this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared before me, the undersigned, a Notary Public in  
and for said County and State, the within named \_\_\_\_\_  
known to me to be the person \_\_\_\_\_ named in and who executed the foregoing instrument and who \_\_\_\_\_ known to me to be \_\_\_\_\_  
member \_\_\_\_\_ of the partnership of \_\_\_\_\_  
acknowledged to me that he 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:

[Signature]  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

# MORTGAGE

Mortgagor

TO

Mortgagee

STATE OF OREGON

County of Klamath } ss.

I certify that the within instrument was received for the record on the 24th day of June, 19 85 at 9:45 o'clock A. M. and recorded in Book 185 on page 9557 Record of Mortgages of said County.

Witness my hand and seal of County affixed.

Evelyn Biehn, County Clerk

County Clerk (Recorder)

By

*Ann Smith*

Fee: \$17.00

Deputy

AFTER RECORDING RETURN TO:

U.S. National Bank of Oregon

Klamath Falls Branch

740 Main St., P.O. Box 789 Address

Klamath Falls, Oregon  
for the attention of:

Robert L. Mason Department  
Assistant Manager

9560