

AFTER RECORDING RETURN TO:  
BOIVIN, McCOBB & UERLINGS, P.C.  
110 North 6th Street  
Klamath Falls, OR 97601

50972

Vol. 785 Page 10795

DATE:

MORTGAGE

6/17/85

PARTIES:

DON D. SUTPHIN, GLORIA J. SUTPHIN, DAVID C. SUTPHIN and DANIEL L. SUTPHIN, dba DAVE'S WHOLESALE CANDY. ("Mortgagor"); and

LEO L. DAVIS and ADAIR F. DAVIS, Husband and Wife ("Mortgagee")

AGREEMENT

1. CONVEYANCE. For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successor and assigns, the following described real property, situated in the County of Klamath, State of Oregon, more fully described in Exhibit "A" attached hereto and incorporated by reference, referred to herein as "the Premises".

2. PURPOSE. This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained and to secure payment of a promissory note in the amount of \$26,672.42, dated the 17 day of June, 1985, together with interest payable on the unpaid balances thereof, at the rate of 12% per annum, a copy of which note is attached hereto marked Exhibit "B" and incorporated herein by reference. 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.

3. WARRANTY OF TITLE. At the time of execution and delivery of this Mortgage, Mortgagor is the owner of the Premises in fee simple. Mortgagor has the right and authority to mortgage the Premises as provided in this Mortgage, and the Premises are free and clear of liens and encumbrances, except:

1. Acreage and use limitations under provisions of the United States Statutes and regulations issued thereunder.

2. Liens and assessments of Klamath Project and Klamath Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.

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3. Any unpaid assessments of Klamath Irrigation District.
4. Rules, regulations and assessments of South Suburban Sanitary District.
5. Right of Way for Pole and underground Cable, including the terms and provisions thereof, by and between E. C. Highley, et al, and the Pacific Telephone and Telegraph Company, a California corporation, dated May 17, 1954, recorded June 3, 1954, in Volume 267, page 212, Deed Records of Klamath County, Oregon.
6. Contract of Sale, including the terms and provisions thereof, by and between Town & Country Mortgage & Investment Co., Inc., an Oregon corporation, and Don D. Sutphin, Gloria J. Sutphin & Daniel L. Sutphin, and David C. Sutphin, dba Dave's Wholesale Candy, purchaser, as disclosed by Memorandum of Contract of Sale, dated June 9, 1980, recorded June 11, 1980, in Volume M-80 on page 10701, Deed Records of Klamath County, Oregon.

By Vendor-Seller's Assignment of Contract and Deed, said contract was assigned by Town & Country Mortgage & Investment Co., Inc., to Albert Bonderow or Louise Bonderow, recorded September 17, 1980, in M-80 on page 17674, records of Klamath County, Oregon.

Mortgagor will defend Mortgagee's rights against any liens and encumbrances other than those listed in this Mortgage.

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. 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 Premises.

5. CHARGES AGAINST 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 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 Premises, 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 nonpayment, Mortgagor shall, within ten 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.

5.3. Insurance and other Charges. Mortgagor will pay when due all premiums upon insurance policies on the Premises and all licenses or fees legally owing by it.

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 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 10 % from the date of payment.

## 6. CONDITION OF PREMISES.

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

6.2. First Class Condition. Mortgagor will maintain the Premises in first class condition.

6.3. Waste. Mortgagor will not permit waste of the Premises or do or suffer anything to be done to depreciate or impair the value of the 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 Premises which will materially decrease the value of the same. Before making any changes in or alterations to the improvements of a value in excess of \$1,000.00, Mortgagor shall give notice to Mortgagee of the nature and extent of the changes or alterations.

## 7. INSURANCE.

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7.1. Insurance Required. Mortgagor will keep the building improvements now erected, or which may hereafter be erected, on the 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 interests 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 days' notice to Mortgagee before cancellation. Mortgagor agrees to notify Mortgagee of any casualty affecting the 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 on the indebtedness secured. If the insurance proceeds are insufficient for repair, Mortgagor shall pay the difference. 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 payments coming due on the indebtedness secured, and any excess over the balance thereof shall be paid to Mortgagor. Amounts retained by Mortgagee shall be applied to payment of the principal sum and interest thereon and other sums secured by this Mortgage.

## 8. DEFAULT.

8.1. 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 any other provision of this Mortgage after receipt of notice from Mortgagee describing said default and affording Mortgagor a period of thirty days, or a reasonable time, if the default cannot be cured in thirty days, to cure such default;

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(c) 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.

8.2. 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 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.

9. 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 attorney fees in such suit or action, or any appeal therefrom. Mortgagor will also pay such sum as the court may adjudge reasonable for the necessary examination and search of the public records respecting the title to the Premises. The plaintiff in such suit or action may take judgment therein 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 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 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.

10. CONDEMNATION. If the Premises, or any part thereof, are condemned under any power of eminent domain or acquired for public use, the damages, proceeds and the consideration for such acquisition, to the extent of the full amount of

the indebtedness secured by this Mortgage are hereby assigned by Mortgagor to Mortgagee and shall be paid forthwith to Mortgagee to be applied by it on account of the last maturing portion of the indebtedness secured hereby.

# 11. MISCELLANEOUS.

11.1. 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.

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

11.3. 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 as follows and deposited in any post office, station or letter box:

TO MORTGAGOR:

Don D. Sutphin  
1809 Chinchalla Way  
Klamath Falls, OR 97601

TO MORTGAGEE:

Leo L. Davis  
P. O. Box 246  
Fort Jones, CA 96032

11.4. Land as Sole Security. Mortgagee hereby acknowledges that this is a purchase money mortgage and that Mortgagee is not entitled to a deficiency judgment. Mortgagee also agrees with Mortgagor that Mortgagee's right to foreclose upon breach of the terms or conditions of this Mortgage is its sole remedy for any such breach, including payment of the aforesaid Promissory Note.

11.5. Transfer. Mortgagor shall have the right to transfer the Premises at any time, with or without Mortgagee's consent.

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

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11.7. Applicable Law. This Mortgage shall be governed by the laws 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 above written above.

MORTGAGOR:

Don D. Sutphin  
DON D. SUTPHIN

Gloria J. Sutphin  
GLORIA J. SUTPHIN

David C. Sutphin  
DAVID C. SUTPHIN

Daniel L. Sutphin  
DANIEL L. SUTPHIN

MORTGAGEE:

Leo L. Davis  
LEO L. DAVIS

Adair F. Davis  
ADAIR F. DAVIS

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EXHIBIT "A"

A parcel of land lying in the NW1/4 of Section 11, Township 39 South, Range 9 E.W.M., more particularly described as follows:

Beginning at a point which is N 1°12' W. 361.4 feet and East 30 feet from the West quarter corner of said Section 11; thence North 1°12' West 100 feet; thence North 88°57' East 100 feet; thence South 1°12' East 100 feet; thence South 88°57' West 100 feet to the point of beginning. Excepting therefrom any portion lying within the right of way of Summers Lane.

EXHIBIT "A"



10803

## PROMISSORY NOTE

\$ 26,672.42

Klamath Falls, Oregon

June 17, 1985

In installments and at the times hereinafter stated, for value received, the undersigned ("Maker") promises to pay to ("Payee"), or order, at Klamath Falls, Oregon, the principal sum of with interest from date on the amounts of principal remaining from time to time unpaid, until said principal sum is paid at the rate of Twelve Percent (12%) per annum. Principal and interest due in monthly installments of Three Hundred Eighty-Two and 67/100 (\$ 382.67 ) or more on the 10th day of each and every month, beginning on the 10th day of June, 1985. The full amount of unpaid principal and interest shall be due and payable June 10, 1995.

AT ANY TIME, THE PRIVILEGE IS RESERVED TO PAY MORE THAN THE SUM DUE. Each payment shall be credited first, on the interest then due, but excluding interest accruing prior to June 10, 1985, which interest shall be due and payable June 10, 1995; and the remainder on the principal sum; and interest shall thereupon cease upon the amount so credited on the principal sum. Should default be made in the payment of any of said installments when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should suit be commenced to collect this note or any portion thereof, such sum as the Court may deem reasonable shall be added hereto as attorney's fees, including attorney fees on appeal. This note is secured by a Mortgage of even date.

In accepting the foregoing promissory note, Payee acknowledges and agrees that Payee's sole remedy for any default hereof is Payee's right to foreclose the Mortgage granted it by Maker as security for this promissory note.

DON D. SUTPHIN

GLORIA J. SUTPHIN

DAVID C. SUTPHIN

DANIEL L. SUTPHIN

## EXHIBIT "B"

STATE OF OREGON: COUNTY OF KLAMATH:ss

I hereby certify that the within instrument was received and filed for record on the 11th day of July A.D.; 19 85 at 4:14 o'clock P M, and duly recorded in Vol 485 of Mortgages on page 10795.

EVELYN BIEHN, COUNTY CLERK

by: Bernetha A. Heloch, DeputyFee: \$ 37.00