

54196

K-37978

MORTGAGE

Vol. 1286 Page 16371

THIS INDENTURE, made this 8th day of August, 1985, between Carleton Bros., a partnership, and Margaret F. Carleton and Elizabeth J. Carleton, in their individual capacities (collectively as mortgagor), and Norwest Equipment Leasing, Inc. (as mortgagee),

WITNESSETH, that for valuable consideration paid by mortgagee on behalf of mortgagor, the mortgagor does hereby grant, bargain, sell and convey unto the said mortgagee, its successors and assigns, those certain premises situated in the County of Klamath and State of Oregon, and described as follows:

See attached Exhibit "A", which is incorporated herein by reference.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and which may hereafter thereto belong or appertain, and the rents, issues and profits therefrom, and any and all fixtures upon said premises at the time of the execution of this mortgage or at any time during the term of this mortgage;

TO HAVE AND TO HOLD the said premises with the appurtenances unto the said mortgagee, his successors and assigns forever.

THIS CONVEYANCE is intended as a mortgage to secure the payment of the sum of Two hundred seventeen thousand seven hundred ninety-eight and 34/100-----

(\$ 217,798.34) Dollars in accordance with the terms of that certain promissory note of which the following is substantially a true copy, to-wit:

See attached Exhibit "B", which is incorporated herein by reference.

The date of maturity of the debt secured by this mortgage is the date on which the last scheduled principal payment becomes due pursuant to the terms of the promissory note.

The mortgagor warrants that the proceeds of the loan represented by the above described note and this mortgage are for commercial purposes only. This is not intended as a consumer transaction.

This indenture is further conditioned upon the faithful observance by the mortgagor of the following covenants hereby expressly entered into by the mortgagor, to-wit:

95 OCT 9 PM 1 34

That mortgagor is lawfully seized of said premises, and now has a valid and unencumbered fee simple title thereto, except for the following encumbrances as enumerated on that certain Preliminary Report Order No. K-37978 (attached hereto as Exhibit "C") issued by Klamath County Title Company: Exception Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12;

and that he will warrant and defend the same against the claims and demands of all persons whomsoever;

That he will pay the said promissory note and all installments of interest thereon promptly as the same become due, according to the tenor of said note;

That so long as this mortgage shall remain in force he will pay all taxes, assessments, and other charges of every nature which may be levied or assessed upon or against the said premises when due and payable, according to law, and before the same become delinquent, and will also pay all taxes which may be levied or assessed on this mortgage or the debt thereby secured, and will promptly pay and satisfy any mechanics' liens or other incumbrances that might by operation of law or otherwise become a lien upon the mortgaged premises superior to the lien of this mortgage;

That he will keep all the improvements erected on said premises in good order and repair and will not commit or suffer any waste of the premises hereby mortgaged. At the request of the mortgagee, the mortgagor shall join with the mortgagee in executing one or more financing statements pursuant to the Uniform Commercial Code, in form satisfactory to the mortgagee and will pay for filing the same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the mortgagee;

That so long as this mortgage shall remain in force he will keep the buildings now erected, or any which may hereafter be erected on said premises insured against loss or damage by fire, with extended coverage, to the extent of insurable value in some company or companies acceptable to said mortgagee and for the benefit of both parties hereto as their interest may appear, and will deliver all the policies and renewals thereof to said mortgagee.

NOW, THEREFORE, if the said mortgagor shall pay said promissory note and shall fully satisfy and comply with the covenants hereinbefore set forth, then this conveyance shall be void, but otherwise to remain in full force and virtue as a mortgage to secure the payment of said promissory note in accordance with the terms thereof and the performance of the covenants and agreements herein contained; it being agreed that any failure to make any of the payments provided for in said note or this mortgage when the same shall become due or payable, or to perform any agreement herein contained, shall give to the mortgagee the option to declare the whole amount due on said note, or unpaid thereon or on

this mortgage, at once due and payable and this mortgage by reason thereof may be foreclosed at any time thereafter. And if the said mortgagor shall fail to pay any taxes or other charges or any lien or insurance premium as herein provided to be done, the mortgagee shall have the option to pay the same and any payment so made shall be added to and become a part of the debt secured by this mortgage, and draw interest at the rate of ten per cent per annum, without waiver, however, of any right arising from breach of any of the covenants herein.

In case a complaint is filed in a suit brought to foreclose this mortgage, the court shall, upon motion of the holder of the mortgage, without respect to the condition of the property herein described, appoint a receiver to collect the rents and profits arising out of said premises, and apply such rents and profits to the payment and satisfaction of the amount due under this mortgage, first deducting all proper charges and expenses of the receivership.

In the event of any suit or action being instituted to foreclose this mortgage, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in such suit or action and in the event of any appeal, the losing party agrees to pay such sum as the appellate court shall adjudge reasonable as the prevailing party's attorney's fees on such appeal; in any event the mortgagor agrees to pay all reasonable costs incurred by the mortgagee for title reports and title search, all such sums to be secured by the lien of this mortgage and included in the decree of foreclosure.

In construing this mortgage, it is understood that the mortgagor or mortgagee may be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, the masculine pronoun shall mean the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the mortgagor has executed this instrument this 8th day of August, 1985; if a corporate mortgagor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

CARLETON BROS., A PARTNERSHIP

By: Richmond J. Carleton
Richmond J. Carleton, General Partner

By: George A. Carleton
George A. Carleton, General Partner

MARGARET F. CARLETON

Margaret J. Carleton

ELIZABETH J. CARLETON

Elizabeth J. Carleton

ACKNOWLEDGEMENT

STATE OF OREGON, County of Klamath) ss.

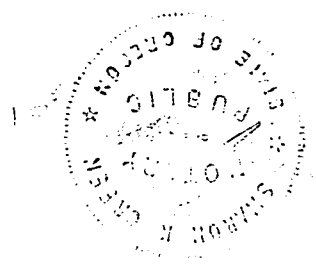
August 8, 1985.

Personally appeared Richmond J. Carleton and George A. Carleton who, being duly sworn, each for himself and not one for the other, did say the they are each a general partner of Carleton Bros., a partnership, and that said instrument was signed in behalf of said partnership and each of them acknowledged said instrument to be its voluntary act and deed.

Before me:

Sharon K. Green
Notary Public for Oregon

My commission expires:
My Commission Expires October 11, 1985



STATE OF OREGON, County of Klamath) ss.

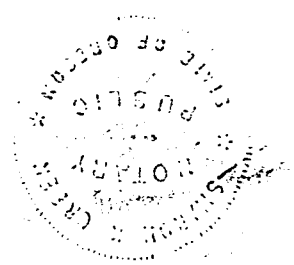
August 8, 1985

Personally appeared the above named Margaret F. Carleton and Elizabeth J. Carleton and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

Sharon K. Green
Notary Public for Oregon

My commission expires: My Commission Expires October 11, 1985



MORTGAGE

Carleton Bros., a partnership
and Margaret F. Carleton and
Elizabeth J. Carleton

TO

Norwest Equipment Leasing, Inc.

After recording return to:
Norwest Leasing, Inc.
Suite 930, Cargill Bldg.
7th St. & Marquette Ave.
Minneapolis, MN 55479-2052

STATE OF OREGON,) ss.
County of Klamath

I certify that the within instrument was received for record on the _____ day of _____, 1985, at _____ o'clock _____ M., and recorded in book/reel/volume No. _____ on page _____ or as document/fee/file/instrument/microfilm No. _____.
Record of Mortgages of said County.
Witness my hand and seal of County affixed.

Name Title
By _____ Deputy

EXHIBIT "A"

A piece or parcel of land situated in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$; NW $\frac{1}{4}$ - SW $\frac{1}{4}$; section 1, Township 41 S, Range 10E, Willamette Meridian in Klamath County, Oregon. Being more particularly described as follows,

Beginning at the SW corner of the of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$; NW $\frac{1}{4}$ - SW $\frac{1}{4}$; of section 1, Township 41 S, Range 10 E, Willamette as the same is now marked by a steel marker at the intersection of the center lines of Main Street and 4th Street in the city of Merrill, Oregon, thence east along the Southerly boundary of the said NW $\frac{1}{4}$ - SW $\frac{1}{4}$; 873' to a point which is the true point of the beginning of this parcel; thence North 395' to a point; thence east 240' to a point; thence south 395' to a point; thence west 240' to the true point of beginning; containing 2.0 acres, more or less, and being subject to all rights of way and/or easements of record as apparent on the premises.



Norwest Equipment Leasing, Inc.
Suite 930, Cargill Building
7th Street and Marquette Avenue
Minneapolis, Minnesota 55479

EXHIBIT "B"

Promissory Note
16376

For value received, the undersigned, Carleton Bros., A Partnership, and * hereby promises to pay to the order of Norwest Equipment Leasing, Inc. ("Debtor") at its office in Minneapolis, Minnesota, or at such other place as may be designated from time to time by the holder hereof, the sum of \$ 337,098.63 in installments according to the schedule set forth below; provided, however, that the undersigned and Debtor may agree to any other payment schedule, in which case any variations shall be set forth in the space provided for additional provisions. The first payment period shall begin on the 15th day of the month in which Debtor disburses the loan proceeds if disbursement is made on or before the 15th day of such month, and the first payment period shall begin on the last day of such month if disbursement is made during the balance of such month. The first installment shall be payable on the first payment due date set forth below (which may be the same as the date the first payment period begins). Subsequent installments shall be payable on the first day of each payment period beginning after the first payment period. The undersigned agrees that the date the first payment period begins may be left blank when this Note is executed and hereby authorizes Debtor to insert such date based upon the date the loan proceeds are disbursed.

*Margaret F. Carleton and Elizabeth J. Carleton, in their individual capacities,

PAYMENT SCHEDULE:

Date first payment period begins: August 31, 19 85
First payment due: August 31, 19 85
Number of installments: Eight (8)
Amount of each installment: \$ *See Additional Provisions

Payment period (check one):

- ☐ Monthly
☐ Quarterly
☐ Semi Annually

- ☒ Annually
☐ Other—See Additional Provisions

ADDITIONAL PROVISIONS: *Seven (7) equal annual installments of \$43,489.84 followed by one (1) final installment of \$32,669.75.

If any installment is not paid when due, then in addition to any other remedy Debtor may have hereunder, Debtor may impose and the undersigned shall pay a late charge of 5% of the amount of the delinquent installment but in any event not more than permitted by applicable law. Payments thereafter received shall be applied first to delinquent installments and then to current installments.

This Note may be prepaid in whole or in part at anytime and from time to time but only if accompanied by a prepayment premium of 2% of the principal amount prepaid. Any partial prepayment shall be applied to the last maturing installment or installments. Upon any prepayment in full, the unearned portion of the finance charge will be refunded under the Rule of 78s.

The following shall constitute an Event of Default hereunder: (a) failure to pay any installment hereunder when due; (b) the occurrence of an event of default as defined in any security agreement or mortgage securing this Note; and (c) the commencement of any bankruptcy or insolvency proceedings by or against the undersigned or any guarantor of this Note. Upon the occurrence of an Event of Default, Debtor may do any one or more of the following as it may elect: (i) upon written notice to the undersigned, declare the entire unpaid balance of the Note to be immediately due and payable, and the same (less unearned interest computed under the Rule of 78s as if this Note had been paid in full on the date it became due and payable) shall thereupon be and become immediately due and payable; (ii) exercise any one or more of the rights and remedies available to it under any security agreement or mortgage securing this Note or under any other agreement or by law.

The undersigned hereby waives presentment, notice or dishonor, and protest. The undersigned agrees to pay all costs of collection of this Note, including reasonable attorney's fees. The holder hereof may change the terms of payment of the Note by extension, renewal or otherwise, and release any security for, or party to, this Note and such action shall not release any accommodation maker, endorser, or guarantor from liability on this Note.

Dated June 12, 19 85

Carleton Bros., a partnership, and
Margaret F. Carleton and Elizabeth J. Carleton,
in their individual capacities

By: George A. Carleton General Partner
Borrower

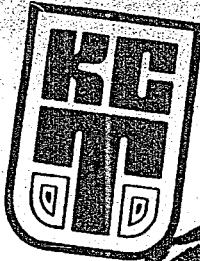
By: Richard J. Carleton General Partner

By: Margaret F. Carleton

By: Elizabeth J. Carleton

EXHIBIT "C"

16377



KLAMATH COUNTY TITLE COMPANY
HOME OWNED SINCE 1905

TITLE INSURANCE • ESCROWS

MEMBER, OREGON LAND TITLE ASSOCIATION
AMERICAN LAND AND TITLE ASSOCIATION

R. E. Veatch, President
Dale Rutters, Executive Vice-President

PRELIMINARY REPORT
Order No. K-37978

To: Richmond J. and Margaret F. Carleton
or Carleton Brothers

Amt. of Ins. \$217,798.34
Premium: \$ 735.00

We are prepared to issue a Title Insurance Policy in the amount shown above insuring title to the land hereinafter described:

A piece or parcel of land situate in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 1, Township 41 South, Range 10 East of the Willamette Meridian, being more particularly described as follows:
Beginning at the Southwest corner of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 1, T. 41 S., R. 10 E.W.M., as the same is now marked by a steel monument at the intersection of the centerlines of Main Street and Fourth Street in the City of Merrill, Oregon; thence East along the Southerly boundary of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ 873.0 feet to a point which is the true point of beginning of this parcel; thence North 395.0 feet to a point; thence East 240.0 feet to a point; thence South 395.0 feet to a point; thence West 240.0 feet to the true point of beginning; containing two acres, more or less.

showing the title as of July 24, 1985 at 8:00 A.M., vested of record in:
RICHMOND J. CARLETON AND MARGARET F. CARLETON,
an estate in fee simple as tenants by the entirety

Subject to the printed exceptions, exclusions and stipulations which are part of said policy, and to the following:

1. Taxes for 1985-86 are now a lien but not yet payable.
NOTE: Taxes for 1984-85 are paid in full in the amount of \$379.55.
Account No. 4110-100-700 Key No. 100599
2. The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. Taxes for the year 1985-86, and possibly prior years have been deferred pursuant to ORS 308.370 to 308.403. These, plus earned interest are due and payable when said reason for the deferment no longer exists.
3. Acreage and use limitations under provisions of United States Statutes and regulations issued thereunder.

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4. Liens and assessments of Klamath Project and Klamath Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.
5. Any unpaid charges or assessments of the Klamath Irrigation District.
6. Rights of the public in and to any portion of the herein described property lying within the boundaries of public roads or highways.
7. Any unpaid charges or assessments of the City of Merrill for municipal improvements.
8. Easement, including the terms and provisions thereof, given by The Klamath Development Company to United States of America, dated August 18, 1913, recorded August 29, 1913, in Volume 39 page 577, Deed Records of Klamath County, Oregon, as follows: "The perpetual right of an easement to enter, for the purpose of excavating, operating and maintaining the A-Drain over portion of the Southwest quarter of the Northwest quarter and the Northwest quarter of the Southwest quarter".
9. Terms and provisions of, including the power of assessment, East Merrill Improvement District, Inc., as disclosed by instrument, recorded January 213, 1974, in Volume M74 page 756, Deed records of Klamath County, Oregon.
10. Mortgage, including the terms and provisions thereof, executed by Richmond J. Carleton and Margaret F. Carleton, husband and wife, to United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, dated July 6, 1976, recorded July 13, 1976, in Volume M76 page 10587, Mortgage Records of Klamath County, Oregon, to secure the payment of \$38,100.00. Covers additional property
11. Mortgage, including the terms and provisions thereof, executed by Carleton Brothers, to United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, dated April 10, 1979, recorded April 10, 1979, in Volume M79 page 7912, Mortgage Records of Klamath County, Oregon, to secure the payment of \$171,610.00. Covers additional property
12. Financing Statement, recorded in the office of the County Clerk, indicating a security agreement, given by Richmond J. Carleton and Margaret F. Carleton, as debtors, to United States of America, acting through Farmers Home Administration, as secured party, recorded July 11, 1983 in Volume M83 page 10919, Mortgage Records of Klamath County, Oregon.

13. Sublease, including the terms and provisions thereof, between James L. Eckhardt and Nellie R. Eckhardt, husband and wife, and Carlton Brothers, a general partnership between George A. Carlton, Elizabeth J. Carlton, Richmond J. Carlton and Margaret Carlton, as disclosed by Memorandum of Sublease, dated August 10, 1984, recorded October 17, 1984, in Volume M84 page 17873, Deed records of Klamath County, Oregon.

By Assignment and Security Agreement, said lease was assigned by James L. Eckhardt and Nellie R. Eckhardt, husband and wife, assignors, to Engineered Structures, Inc., an Idaho corporation, assignee, dated December 18, 1984, recorded December 31, 1984, in Volume M84 page 21792, Deed records of Klamath County, Oregon.

14. Ground Lease, including the terms and provisions thereof, between Carlton Brothers, a general partnership, and Richmond J. Carlton and Margaret F. Carlton, husband and wife, and James L. Eckhardt and Nellie R. Eckhardt, husband and wife, to James L. Eckhardt and Nellie R. Eckhardt, husband and wife, as disclosed by Memorandum of Ground Lease, dated August 10, 1984, recorded October 17, 1984, in Volume M84 page 17880, Deed records of Klamath County, Oregon.

By Assignment and Security Agreement, said lease was assigned by James L. Eckhardt and Nellie R. Eckhardt, husband and wife, assignors, to Engineered Structures, Inc., an Idaho corporation, assignee, dated December 18, 1984, recorded December 31, 1984, in Volume M83 page 21792, Deed records of Klamath County, Oregon.

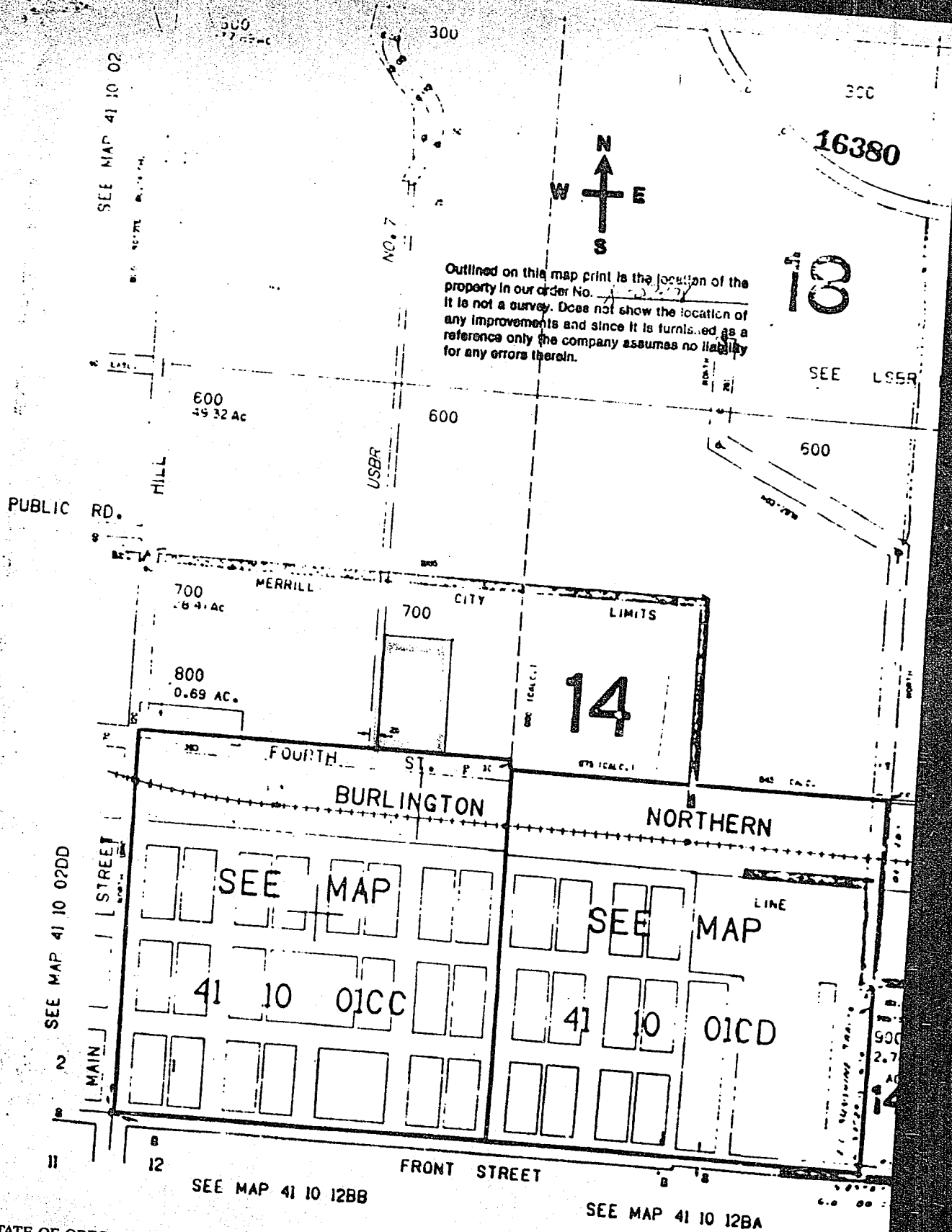
15. Financing Statement, recorded in the office of the County Clerk, indicating a security agreement, given by James L. Eckhardt and Nellie R. Eckhardt, husband and wife, as debtors to Engineered Structures, Inc., as secured party, recorded December 31, 1984, in Volume M84 page 21786, Mortgage Records of Klamath County, Oregon.

NOTE: No liability is assumed under this report until the premium is paid.

TD/cd
44/6-7
cc Nor-West Leasing

KLAMATH COUNTY TITLE COMPANY

By: *Nellie Eckhardt*



Outlined on this map print is the location of the property in our order No. 16371. It is not a survey. Does not show the location of any improvements and since it is furnished as a reference only the company assumes no liability for any errors therein.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ of _____ October _____ A.D., 19 85 at 1:34 o'clock P M., and duly recorded in Vol. _____ 9th day of _____ Mortgages _____ on Page 16371

FEE \$41.00

Evelyn Biehn
By _____
County Clerk
Alan Smith