

MTC-17406
MORTGAGE

This indenture is made this 17th day of February, 19 87, between ROGER NICHOLSON whose address is P.O. Box 458, Fort Klamath, Oregon, 97626, hereinafter called "Mortgagor", and FIRST INTERSTATE BANK OF OREGON, N.A., whose address is P.O. Box 608, Klamath Falls, Oregon, 97601 hereinafter called "Lender".

The Lender has loaned Roger Nicholson Cattle Co., an Oregon corporation, ("Borrower"), the sum of Two Hundred Ten Thousand and no/100 (\$210,000.00), 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 December 20, 1991. 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 under this mortgage and any extensions and renewals, and (c) any sums paid or advanced by the Lender to discharge obligations of Mortgagor or Borrower as permitted under this mortgage, with interest.

To secure payment of the Indebtedness and performance of all obligations of Mortgagor under this mortgage, Mortgagor has bargained and sold and does hereby grant, bargain, sell and convey to the Lender on the terms set out below, all the following described property in Klamath County, State of Oregon:

The following described real property situate in Klamath County, Oregon to wit:

The Southeast quarter of Section 3, Township 34 South, Range 7 1/2 East of the Willamette Meridian, Oregon, EXCEPT, a strip of land 60.0 feet in width lying on the Westerly boundary of said property.

together with all appurtenances, all existing or subsequently erected or affixed improvements or fixtures, and, ~~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. PROMISE TO PAY.

Borrower shall pay, when due, the Indebtedness hereby secured, with interest as prescribed by said note.

2. POSSESSION AND MAINTENANCE OF PROPERTY.

2.1 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.

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

3. 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 improvements on the Property, the improvements shall be completed on or before N/A and Mortgagor shall pay in full all

costs and expenses in connection with the work, and as required in any construction loan agreement.

4. TAXES AND LIENS.

4.1 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, except those permitted under 8.1 and 13., the lien of taxes and assessments not delinquent, and except otherwise provided in 4.2.

4.2 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 non-payment, 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 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.

4.3 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.

5. INSURANCE.

5.1 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 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 provisions in any policy.

5.2 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.

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

6. EXPENDITURES BY THE BANK.

If Mortgagor or Borrower shall fail to comply with any provisions of this mortgage, the Lender may, at its option, on Borrower'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, two percent of the payment of principal and interest, and/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 in Exhibit "A" attached hereto, thereafter 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 conditions 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. FINANCIAL STATEMENTS.

Borrower and Mortgagor shall provide Lender with such financial and operating statements as Lender may request from time to time during the term of the loan. The form of such financial statements shall be subject to approval by Lender and shall be warranted as complete and correct by Borrower and Mortgagor. Borrower and Mortgagor shall also permit Lender or its representative, upon prior written notice of not less than 10 days, to examine all books and records pertaining to the Property. In default thereof, Lender shall, in addition to all other remedies, have the option of accelerating the Indebtedness.

10. CONDEMNATION.

10.1 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.

10.2 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.

11. IMPOSITION OF TAX BY STATE.

11.1 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 mortgaged 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.

11.2 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) Borrower may lawfully pay the tax or charge imposed by the state tax, and

(b) Borrower pays or offers to pay the tax or charge within 30 days after notice from the Lender that the tax law has been enacted.

12. TRANSFER BY MORTGAGOR.

12.1 Mortgagor shall not, without the prior written consent of the Lender, transfer any of Mortgagor's interest in the Property, whether or not the transferee assumes or agrees to pay the Indebtedness.

13. SECONDARY FINANCING.

Mortgagor shall not permit or allow any further encumbrances of the property to secure repayment of additional financing without the prior written consent of Lender.

14. SECURITY AGREEMENT: FINANCING STATEMENTS.

14.1 This instrument shall constitute a security agreement with respect to any personal property included within the description of the Property.

14.2 ~~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.~~

15. RELEASE ON FULL PERFORMANCE.

If Borrower 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.

16. DEFAULT.

The following shall constitute events of default:

16.1 Failure of Borrower to pay any portion of the Indebtedness when it is due and as provided for in the note.

16.2 Failure of Borrower 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.

16.3 Mortgagor's or Borrower's performance of any acts prohibited by the terms and conditions of this mortgage.

16.4 Failure of Mortgagor or Borrower to perform any other obligation under this mortgage within 10 days after receipt of written notice from the Lender specifying the failure.

16.5 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 10 days after receipt of written notice from Lender specifying the failure.

16.6 Default in any other obligation secured by a lien on the property described in this mortgage, or the commencement of any action to foreclose any such lien.

16.7 Any voluntary or involuntary petition in bankruptcy filed against Borrower under any chapter of the bankruptcy act, or Borrower's assignment for the benefit of creditors, or if Borrower becomes insolvent in any manner.

17. RIGHTS AND REMEDIES ON DEFAULT.

17.1 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 tenants 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 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, or in any construction loan agreement executed in connection with the Indebtedness.

17.2 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.

17.3 The Lender shall give Mortgagor and Borrower 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.

17.4 A waiver by any 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 under this mortgage after failure to perform shall not affect the Lender's right to declare a default and exercise its remedies under this paragraph 17.

17.5 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 Borrower 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.

18. 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.

19. SUCCESSION; TERMS.

19.1 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.

19.2 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.

19.3 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.

19.4 The provisions of this mortgage shall be governed by the laws of the State of Oregon.

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IN WITNESS WHEREOF, said Mortgagor and Borrower have executed this indenture as of the day and year first above written.

-MORTGAGOR -

- BORROWER -

Roger Nicholson
Roger Nicholson

ROGER NICHOLSON CATTLE CO.,
an Oregon corporation,

By: Roger Nicholson President

STATE OF Oregon }
COUNTY OF Klamath } ss.

The foregoing instrument was acknowledged before me this 17th day of February, 1987, by Roger Nicholson.

Clara Corbett
Notary Public for Oregon

My commission expires: April 5, 1988

STATE OF Oregon }
COUNTY OF Klamath } ss.

The foregoing instrument was acknowledged before me this 17th day of February, 1987, by ROGER NICHOLSON of Oregon corporation, PRESIDENT of ROGER NICHOLSON CATTLE CO. an Oregon corporation, on behalf of the corporation.

Clara Corbett
Notary Public for Oregon

My commission expires: April 5, 1988

After recording return to:
First Interstate Bank of Oregon, N.A.
P.O. Box 608
Klamath Falls, Oregon 97601

PERMITTED ENCUMBRANCES

Exhibit A

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1. Rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.
2. The assessment roll and the tax roll disclose that the premises herein described have been specially assessed as Farm Use Land. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied; in addition thereto a penalty may be levied if notice of disqualification is not timely given.
3. Reservations as contained in Land Status Report to Moffie Hill Nelson, aka Maggie Hill Nelson, recorded December 3, 1958 in Book 307, page 159, Deed Records of Klamath County, Oregon.
4. The premises herein described are within and subject to the statutory powers including the power of assessment, of Klamath Indian Irrigation and Agency Irrigation District.



STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 18th day
of February A.D., 19 87 at 1:33 o'clock P M., and duly recorded in Vol. M87
of _____ Mortgages on Page 2557.

FEE \$33.00

Evelyn Biehn, County Clerk
By [Signature]