

84901

MTC 19443-L  
MORTGAGE

Vol. M88 Page 3051

THIS INDENTURE, made this 2nd day of March, 1988 between  
Snowy Butte Foods, Inc., An Oregon Corporation, herein called "Mortgagor", and WESTERN BANK, an Oregon banking corporation, herein called "Mortgagee",

## WITNESSETH:

For value received by the Mortgagor from the Mortgagee, the Mortgagor does hereby grant, bargain, mortgage and convey unto the Mortgagee all the following described property situated in Klamath County, Oregon, to-wit:

See Attached Exhibit "1"

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together with the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in anywise appertaining, including but not limited to roads and easements used in connection with the premises; also, all fixtures, buildings and parts of buildings situated upon said property, including but not limited to electric wiring and fixtures; furnace and heating system, water heaters, fuel storage receptacles; plumbing, ventilating, water and irrigating systems; screens, doors; window shades and blinds, shutters; cabinets, built-ins, linoleums and floor coverings, built-in stoves, ovens, garbage disposals, air conditioners, refrigerators, freezers, dishwashers; and all other fixtures now or hereafter installed in or on the premises; and any shrubbery, flora or timber now growing or hereafter planted or growing thereon; and any and all replacements of any one or more of the foregoing items, in whole or in part, all of which are hereby declared to be appurtenant to the land; and all the rents, issues and profits arising from the mortgaged property.

TO HAVE AND TO HOLD the same unto the Mortgagee, its successors and assigns forever.

The Mortgagor does hereby covenant to and with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the said real property that he is the absolute owner of all items of property described hereinabove, that the said property is free from encumbrances of every kind and nature, other than the following permitted encumbrance(s):  
Mortgage to Western Bank

and that he will warrant and forever defend the same against the lawful claims and demands of all persons whomsoever.

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained, to be by the Mortgagor kept and performed and to secure the payment of the sum of \$425,000.00 and interest thereon in accordance with the tenor of a certain promissory note executed by Snowy Butte Foods, Inc.

dated March 2, 1988, payable to the order of the Mortgagee in installments of not less than \$4,697.95 each including interest, on the 1st day of each Month commencing April 1 1988, until March 1, 1991 when the balance then remaining unpaid shall be paid.

This Mortgage is also given as security for the payment of any and all other indebtednesses, obligations or liabilities of the Mortgagor to the Mortgagee now existing or hereafter arising, matured or to mature, absolute or contingent and wherever payable, including but not limited to such as may arise from endorsements, guarantees, acceptances, bills of exchange, promissory notes, or other paper discounted by the Mortgagee or held by the Mortgagee, or taken as security for any loans or advances of any kind, sort or description whatsoever.

The interest rate, payment terms and balance due under the promissory note or any other note(s), or any other agreement evidencing any indebtedness of Mortgagor to Western Bank (all of which are secured hereby) may be indexed, adjusted, renewed or renegotiated in accordance with the terms of the promissory note(s) or other agreement.

The Mortgagor does hereby covenant and agree to and with the Mortgagee, its successors and assigns:

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1. That Mortgagor will pay, when due, the indebtedness hereby secured, with interest as prescribed by said promissory note, and will pay, when due, all other sums secured hereby, and all taxes, liens and utility charges upon said premises, or for services furnished thereto. In addition thereto, Mortgagor will pay, at the time of payment of each installment of principal and interest, such amount as Mortgagee shall estimate to be sufficient to produce, at least one month prior to the time when payment thereof shall become due, the amount of (a) taxes, assessments and other governmental rates and charges against said premises (herein all called "taxes") and (b) premiums upon insurance against loss or damage to said premises (said amounts being referred to hereinafter as "loan trust funds"). If the sums so paid shall be less than sufficient for said purposes, Mortgagee will also pay, upon demand, such additional sum as Mortgagee shall deem necessary therefor. If Mortgagor desires a "package" plan of insurance which includes coverage in addition to that required under this mortgage, Mortgagee may, at its option, establish and administer a reserve for that purpose. If the package plan reserve is not sufficient to pay the renewal premium on a package plan policy, then Mortgagee may use such reserve to pay premiums on a policy covering only risks required to be insured against under this mortgage and allow the package plan policy to lapse. Mortgagee shall, upon the written direction of Mortgagor, and may, without such direction, apply sums paid by Mortgagor and held by Mortgagee to the purposes aforesaid; but the receipt of such sums shall not, in the absence of such direction, impose any duty upon Mortgagee to disburse the same or relieve Mortgagor from his covenants to pay said obligations or to keep the premises insured. Mortgagee may, from time to time, establish reasonable service charges for the collection and disbursement of premiums on package-type insurance policies. Mortgagee shall not, whether or not service charges are imposed, be subject to any liability for failure to transmit any premiums to any insurer or by reason of any loss growing out of any defect in any insurance policy. At Mortgagee's option, Mortgagee may apply all loan trust funds directly to the payment of the principal balance then unpaid on the indebtedness secured hereby; if Mortgagee elects so to do, Mortgagee is authorized to pay taxes, insurance premiums on the mortgaged property and all other charges which would otherwise be payable from the loan trust funds, when the same become due and payable, and Mortgagee may then add the amount of any such payment to the principal balance then unpaid on the indebtedness secured hereby, each such payment to bear interest as provided below.

2. That Mortgagor will not commit or permit strip or waste of the said premises, or any part thereof; that Mortgagor will keep the real and personal property hereinabove described in good order and repair and in tenantable condition; that Mortgagor will promptly comply with any and all municipal and governmental rules and regulations with reference thereto; that Mortgagor will not cut or permit the cutting or removal of any timber without the written consent of Mortgagee, that if any of the said property be damaged or destroyed by any cause, Mortgagor will immediately reconstruct or repair the same so that, when completed, it shall be worth not less than the value thereof at the time of such loss or damage; provided, that if such loss or damage shall be caused by a hazard covered by insurance payable to Mortgagee, the obligation of the Mortgagor to repair or reconstruct shall not arise unless the Mortgagee shall consent to the application of the insurance proceeds to the expense of such reconstruction or repair.

3. That Mortgagor will, at Mortgagor's own cost and expense, keep the building or buildings now or hereafter upon said premises, together with all personal property covered by the lien hereof, insured against loss by fire and against loss by such other hazards as the Mortgagee may from time to time require, in one or more insurance companies satisfactory to or

designated by the Mortgagee in an aggregate amount not less than the amount of the indebtedness hereby secured (unless the full insurable value of such building or buildings is less than the amount hereby secured, in which event the Mortgagor shall insure to the amount of the full insurable value); that all policies of insurance upon said premises, including policies in excess of the amount hereinabove mentioned and policies against other hazards than those required, shall contain such provisions as the Mortgagee shall require and shall provide, in such form as the Mortgagee may prescribe, that loss shall be payable to the Mortgagee; that all such policies and receipts showing full payment of premiums therefor shall be delivered to and retained by the Mortgagee during the existence of this mortgage; that at least 5 days prior to the expiration of any policy or thereof together with premium receipts in full; that if any policy or policies shall impose any condition upon the liability of the insurer or shall contain any "average clause" or other provision by which the insurer may be liable for less than the full amount of the loss sustained, Mortgagor will, as often as the Mortgagee may require, provide the Mortgagee with all such evidence as it may request concerning the performance of such condition or the existence of any facts or the value of the property insured and, if it shall appear to the Mortgagee that the insurance is prejudiced by the acts or omissions of the Mortgagor or that the coverage is inadequate, the Mortgagor will do such acts and things and obtain such further insurance as the Mortgagee may require; that the Mortgagee may, at its option, require the proceeds of any insurance policies upon the said premises to be applied to the payment of the indebtedness hereby secured or to be used for the repair or reconstruction of the property damaged or destroyed.

4. Mortgagor will pay when due all amounts which are or may become a lien upon the property prior to this mortgage, including, without limitation, any permitted encumbrance set forth above.

5. That in case the Mortgagor shall fail, neglect or refuse to do or perform any of the acts or things herein required to be done or performed, the Mortgagee may, at its option, but without any obligation on its part so to do, and without waiver of such default, procure any insurance, pay any taxes or liens or utility charges, make any repair, pay any amounts due under any lien or encumbrance which are or may become a lien on the property prior to this mortgage, or do any other of the things required, and any expenses so incurred any sums so paid shall bear interest at 12% per annum, or at the rate of interest set forth in the note mentioned above, whichever is greater, and shall be secured hereby.

6. That Mortgagor will not, without the prior written consent of Mortgagee, transfer his interest in said premises or any part thereof, whether or not the transferee assumes or agrees to pay the indebtedness hereby secured. Upon any application for Mortgagee's consent to such a transfer, Mortgagee may require from the transferee such information as would normally be required if the transferee were a new loan applicant. Mortgagee shall not unreasonably withhold its consent. As a condition of its consent to any transfer, Mortgagee may, in its discretion, impose a service charge not exceeding one percent of the original amount of the indebtedness hereby secured and may increase the interest rate on the indebtedness hereby secured by not more than five percent per annum.

7. That, if any default be made in the payment of the principal or interest of the indebtedness hereby secured or in the performance of any of the covenants or agreements of this mortgage, the Mortgagee may, at its option, without notice, declare the entire sum secured by this mortgage due and payable and foreclose this mortgage.

That, in the event of the institution of any suit or action to foreclose this mortgage, the Mortgagor will pay such sum as the trial court and any appellate court may adjudge reasonable as attorney's fees in connection therewith and such further sums as the Mortgagee shall have paid or incurred for costs and disbursements in such suit or action, extensions of abstracts or title searches or examination fees in connection therewith, whether or not final judgment or decree therein be entered and all such sums are secured hereby and shall bear interest from the date paid or incurred by Mortgagee or from the date of judgment, whichever occurs first, at the rate set forth in the promissory note mentioned above; that in any such suit, the court may, upon application of the plaintiff and without regard to the condition of the property or the adequacy of the security for this indebtedness hereby secured and without notice to the Mortgagor or any one else, appoint a receiver to take possession and care of all said mortgaged property and collect and receive any or all of the rents, issues and profits which had theretofore arisen or accrued or which may arise or accrue during the pendency of such suit; that any amount so received shall be applied toward the payment of the debt secured hereby, after first paying therefrom the charges and expenses of such receivership; but until a breach or default by the Mortgagor in one or more of his covenants or agreements herein contained, Mortgagor may remain in possession of the mortgaged property and retain all rents actually paid to and received by Mortgagor prior to such default.

9. 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. Masculine pronouns include feminine and neuter. Subject to the limitations in this mortgage on transfer of the property by Mortgagor, all of the covenants of the Mortgagor shall be binding upon his heirs, executors, administrators, successors and assigns and inure to the benefit of the successors and assigns of the Mortgagee. In the event of any transfer of the property or any part thereof or any interest therein, whether voluntary or involuntary or by operation of law, the Mortgagee may, without notice to the Mortgagor or any one else, once or often, extend the time of payment or grant renewals of indebtedness hereby secured for any term, execute releases or partial releases from the lien of this mortgage or in any other respect modify the terms hereof without thereby affecting the personal primary liability of the Mortgagor for the payment of the indebtedness hereby secured. No condition of this mortgage shall be deemed waived unless the same be expressly waived in writing by the Mortgagee. Whenever any notice, demand, or request is required by the terms hereof or by any law now in existence or hereafter enacted, such notice, demand or request shall be sufficient if personally served on one or more of the persons who shall at the time hold record title to the property herein described or if enclosed in a postpaid envelope addressed to one or more of such persons or to the Mortgagor at the last address actually furnished to the Mortgagee or at the mortgaged premises and deposited in any post office.



IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage on the date set forth above, and if Mortgagor is a corporation, Mortgagor covenants that this Mortgage is executed pursuant to a duly adopted resolution of its Board of Directors.

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Individuals & Partnerships

Corporation

Snowy Butte Foods, Inc.

(Name of Corporation)

by William St. Laurent

(Name and Title (type))

President

INDIVIDUAL(S) ACKNOWLEDGEMENT

STATE OF OREGON

County of

This instrument was acknowledged before me on

(date) by

(name of person(s)).

CORPORATE ACKNOWLEDGEMENT

STATE OF OREGON

County of Klamath

This instrument was acknowledged before me on

March 2, 1988

Notary Public for Oregon  
My Commission Expires:

a Corporation, President

(date) by

William St. Laurent

(title(s)) of Snowy Butte Foods, Inc.

PARTNERSHIP ACKNOWLEDGEMENT

STATE OF OREGON

County of

This instrument was acknowledged before me on

(date) by

(name of person(s)) as partners of  
a Partnership.

Notary Public for Oregon  
My Commission Expires:

2-9-90

Return:  
Western Bank  
N1271  
K Falls 97607

Notary Public for Oregon  
My Commission Expires:

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## EXHIBIT "1"

## DESCRIPTION OF PROPERTY

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

## PARCEL 1

Starting at quarter corner between Sections 16 and 17 in Twp. 39 South, Range 9 E.W.M., said point being also the SE corner of Lot 2 in said Section 17; thence W. along the South line of said Lot 2, 660 feet; thence North along a line running North and South through the center of the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of said Section 17 (being Lot 2 of said Section) 811.67 feet, more or less, to the intersection of said North and South line with the Easterly line of the right-of-way of the California Northeastern Railway; thence Northeasterly along the said Easterly line of the right-of-way of said railway 1187.97 feet, more or less, to the intersection of said Easterly line of said railway right-of-way with the East line of said Section 17; thence South 1797.89 feet, more or less, to the point of beginning.

## PARCEL 2

Beginning at a point on the South line of Lot 2 of Section 17, Twp. 39 S., Range 9 E.W.M., 660 feet West of the quarter section corner common to Sections 16 and 17 in said township and range, running thence North 811.67 feet to the Southeasterly right-of-way of the California, Northeastern Railroad (Southern Pacific Railroad); thence Southwesterly along the right of way of the said Railroad to the South line of said Lot 2; thence East 540 feet, more or less, to the place of beginning.

## PARCEL 3

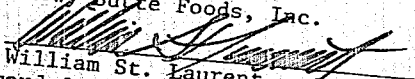
690 feet off the North side of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, Twp. 39 S., Range 9 E.W.M., in Klamath County, Oregon, EXCEPTING AND RESERVING THEREFROM a parcel of land lying in the Southwest corner of said tract described as follows: Beginning at the Southwest corner of the land herein described, running thence Easterly along the Southerly line of said tract, 219 feet; thence Northwesterly at an angle of 22°, 562 feet to the Westerly line of said tract; thence Southerly 544 feet to the place of beginning, the same being a triangular tract.

ALSO, a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, Twp. 39 S., Range 9 E.W.M., more particularly described as follows: Beginning at a point on the West line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17 Twp. 39 S., Range 9 E.W.M., which is 430 feet North of the Southwest corner of the North 20.27 acres of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17; thence East 44.7 feet; thence North 22°00' West a distance of 85 feet, more or less, to the Southeasterly right of way line of the Southern Pacific Right of Way; thence South 33°29' West along said Right of Way line a distance of 23 feet, more or less, to the West line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 17; thence South 62 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM, that

Snowy Butte Foods, Inc.

portion conveyed to Klamath County by deed recorded December 19, 1929 in Volume 84, page 314, Deed records of Klamath County Oregon.

by:  Pres.

ASSIGNED BY THESE INSTRUMENTS, THE WESTERN BANK, an Oregon corporation, has agreed to make a loan to Snowy Butte Foods, Inc.

referred to as the "Assignors") which loan is evidenced by Assignor's note dated March 2, 1988

the principal amount of Four hundred twenty five thousand and no/100

425,000.00 Dollars and interest payable in equal monthly installments of Four thousand six hundred ninety seven and 95/100 (\$ 4,697.95) Dollars each, payable on the 1st day of each month, commencing with April 1, 1988, secured by a Trust Deed or Mortgage dated March 2, 1988

WHEREAS the said Assignors agree, in consideration of the making of the aforesaid loan, to assign as additional collateral security the rent and income from the hereinafter described property:

NOW, THEREFORE, in consideration of the loan hereinabove described and other valuable consideration,

Snowy Butte Foods, Inc.

do hereby assign to the said Assignee, or its assigns, all rents and revenues from the following described property:

See Attached Exhibit "1"

and the Assignors hereby expressly authorize and empower the said Assignee, its agents or attorneys, at its election, without notice to the Assignor (or their successors in interest) as agent for the Assignor to take and maintain full control of said property and the improvements thereon; to oust tenants for non-payment of rent; to lease all of said property or any portion thereof in the name of the Assignors on such terms as it may deem best; to make alterations or repairs it may deem advisable and deduct the cost thereof from the rents; to receive all rents and income therefrom and issue receipts therefor and out of the amount or amounts so received to pay the necessary operating expenses and to retain the usual charges for thus managing said property; and to apply on the aforesaid mortgage any amount due upon the debt secured thereby; to pay taxes, assessments and premiums on insurance policies, or renewals thereof, on said property, or amounts necessary to carry out any covenant in the said mortgage contained; the Assignee herein to determine which items are to be met first; and to pay any overplus so collected to the owners of said property; and those exercising this authority shall be liable to the owners only for the amount collected hereunder and the accounting thereof and as to all other persons those exercising this authority are acting only as agent of the owners in the protection of mortgagee's interest. In no event is the right to such management and collection of rents to affect or restrict the right of the mortgagee to foreclose the aforesaid mortgage according to its terms.

It is understood that failure to collect rents for any given month or other period does not constitute a waiver by Assignee if said Assignee desires to collect rents pursuant to this assignment for any other month or period.

Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

Dated this 2nd day of March, 19 88 Snowy Butte Foods, Inc.

by: William St. Laurent Pres.

STATE OF Oregon )  
COUNTY OF Klamath ) ss.

March 2 A.D., 19 88.

Personally appeared the above named William St. Laurent, President of Snowy Butte Foods, Inc. and acknowledged the foregoing instrument to be his voluntary act and deed. Before me:

Caroline H. Marshall  
Notary Public for Oregon  
My Commission Expires 2-9-90

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Company the 3rd day of March A.D., 19 88 at 2:58 o'clock P. M., and duly recorded in Vol. M88 of Mortgages on Page 3051.

FEE \$30.00

Evelyn Biehn, County Clerk  
By P. Am... ..