

91747

MTC-20226L-ACC
MORTGAGE

Vol. 288 Page 15574

DATE: September 1, 1988

PARTIES: L. A. GIENGER and PAULINE H. GIENGER,
dba GIENGER INVESTMENTS
HC 30 Box 55, Chiloquin, OR 97624

MORTGAGOR

GIENGER ENTERPRISES, INC., an Oregon
corporation
P. O. Box 384
Chiloquin, OR 97624

MORTGAGEE

AGREEMENTS:

SECTION 1. CONVEYANCE

For value received Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns, real property, situated in the County of Klamath, State of Oregon, attached hereto as Exhibit "A", together with the appurtenances now or hereafter belonging to the property, and all the rents, issues and profits arising or to arise therefrom. All property subject to this Mortgage is hereinafter referred to as the mortgaged premises. Until default, Mortgagor may remain in possession of the mortgaged premises and may manage and collect all rents and revenues from the mortgaged premises.

SECTION 2. PURPOSE

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained and contained in any loan agreement, security agreement or other agreement between Mortgagor and Mortgagee, and to secure payment of a loan or loans in the principal amount of One Million Five Hundred One Thousand Six Hundred Eighty and No/100ths (\$1,501,680.00) DOLLARS, evidenced by a Promissory Note from Mortgagor to Mortgagee dated September 1, 1988, together with interest payable on the unpaid balances thereof at the rate specified in the Note. 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.

SECTION 3. WARRANTY OF TITLE

At the time of execution and delivery of this Mortgage, Mortgagor is the owner of the mortgaged premises in fee simple, Mortgagor has the right and authority to mortgage the mortgaged

premises as provided in this Mortgage, and the mortgaged premises are free and clear of liens and encumbrances. This mortgage is a purchase money mortgage.

SECTION 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 and of any loan agreement or security agreement executed in connection with the indebtedness secured by 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 mortgaged premises or their use.

SECTION 5. CHARGES AGAINST MORTGAGED 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 mortgaged 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 mortgaged premises, whether or not 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 (10) 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 plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

SECTION 6. PARTIAL RELEASES

6.1 Partial Releases. Mortgagee will give to Mortgagor a release of any portion or parcel of property upon the condition that Mortgagor is not then in default upon the Mortgage and that Mortgagor pays to Mortgagee not less than one-half of the net proceeds received by Mortgagor in the sale or trade of the parcel.

6.2 Substituted Security. In the event the Mortgagor trades the portion or parcel of property for other property, either real or personal, or makes a transaction, part for cash and part for credit, the Mortgagor shall grant to the Mortgagee a

mortgage or security interest in the property received in trade or in the mortgage or security interest of the Mortgagor, as received from the third party purchaser in return for the release described in Section 6.1.

SECTION 7. ASSIGNMENT OF ISSUES AND PROFITS

Mortgagor hereby assigns and transfers to Mortgagee the issues and profits, together with full power and authority to demand, sue for and collect the same in the name of Mortgagor, or in its own name, and to take possession of and manage the mortgaged premises or to cause a receiver to be appointed for such purpose and apply the income therefrom, after the costs of collection and management, to the reduction of the indebtedness secured hereby. However, the right to collection and management shall not apply as long as this Mortgage is in good standing.

SECTION 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 all the provisions of this Mortgage;
- (c) The happening of an event of default under any other agreement or security instrument between Mortgagor and Mortgagee;
- (d) 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 a 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, together with any prepayment penalties imposed by any agreement or security agreement between Mortgagor and Mortgagee, and foreclosure proceedings may be immediately commenced. All rights and remedies of Mortgagee

shall be cumulative and nonexclusive and in addition to any other right or remedy contained in this Mortgage or otherwise available under applicable law. 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.

SECTION 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 upon any appeal or petition for review. 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 mortgaged 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 mortgaged 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 mortgaged 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.

SECTION 10. MISCELLANEOUS

10.1 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.

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

10.3 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 to Mortgagor at the last address actually furnished to Mortgagee, or at the mortgaged premises, and deposited in any post office station or letter box.

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

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

10.6 Applicable Law. This Mortgage shall be governed by the law of the State of Oregon, and any question arising hereunder shall be construed or determined according to such law.

IN WITNESS WHEREOF the parties have executed this agreement as of the date first written above.

GIENGER INVESTMENTS

By: L. A. Gienger
L. A. Gienger

By: Pauline H. Gienger
Pauline H. Gienger

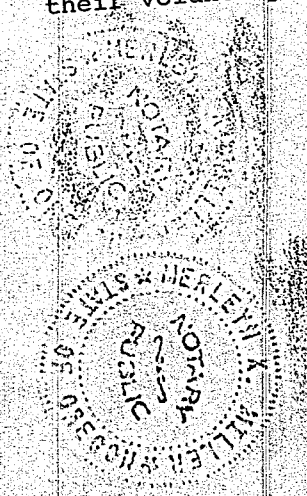
STATE OF OREGON)

County of Klamath)

) ss. September 1, 1988

Personally appeared the above-named L. A. GIENGER and PAULINE H. GIENGER and acknowledged the foregoing Mortgage to be their voluntary act and deed. Before me:

Notary Public for Oregon
My Commission expires: 9-16-89



MILL SITE

15679

PARCEL I. Lots 1, 45, and 46 of Modoc Point, a platted subdivision of Klamath County, Oregon.

PARCEL II. That portion of Government Lots 19 and 22 lying Northwest of Highway 427 and West of the Westerly right of way of the Southern Pacific Railroad right of way and North of Modoc Point, a platted subdivision in Klamath County, Oregon, in Section 15, Township 36 South, Range 7 East of the Willamette Meridian; LESS that portion lying West of a line running N01°35'15" W from Highway 427 in a 20' canal as established in a survey filed on May 22, 1978 in the Klamath County Surveyor's office under Survey Number 2667.

PARCEL III. That portion of the NE1/4 of Section 15, Township 36 South, Range 7 East of the Willamette Meridian, more particularly described as follows:

Beginning at the Northwest corner of Modoc Point, a platted subdivision in Klamath County, Oregon; thence South 05°32' East 583.77 feet; thence West 93.22 feet; thence North 01°06'15" East to the South right of way line of Highway 427; thence Easterly along the South right of way line of Highway 427 to the North boundary of Modoc Point, a platted subdivision in Klamath County, Oregon; thence West along the North boundary of Modoc Point, a platted subdivision in Klamath County, Oregon to the point of beginning.

PARCEL IV. Governments Lots 20 and 21 in Section 15, Township 36 South, Range 7 East of the Willamette Meridian, less that portion described in the deed recorded in Volume M75, page 8146, Records of Klamath County, Oregon.

PARCEL V. That portion of Section 21, Township 36 South, Range 7 East of the Willamette Meridian. MODOC POINT

PARCEL I. Government Lots 4, 5, 12, 13 and those portions of Government Lots 3, 6, 11 and 14 lying West of the Southern Pacific Railroad right of way and that portion of Lot 19 lying North of Highway 427 and West of a line in a 20' canal running N 01°35'15" W from a point on Highway 427 as disclosed by Survey Number 2667 filed with the Klamath County, Oregon Surveyor's Office, in Section 15, Township 36 South, Range 7 East of the Willamette Meridian.

PARCEL II. Government Lots 5, 6, 11, 12, 13, 14, 19, 20, 21, 22, 27, 28, 29 and 30, less the portion lying in the Southern Pacific Railroad right of way in Section 10, Township 36 South, Range 7 East of the Willamette Meridian; thence S 33°01'00" E 150.00 feet to the point of beginning.

PARCEL III. Government Lots 19, 22, 25, 27, 30, 31, 32, the W1/2 of 23 and that portion of 26 lying West of Highway 427 in Section 9, Township 36 South, Range 7 East of the Willamette Meridian.

PARCEL IV. Government Lots 1, 2, 3, 6, 7, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 24, 27, 28, 29, 30, the E1/2 of 8 and the W1/2 of 14, in Section 16, Township 36 South, Range 7 East of the Willamette Meridian; thence West of Highway 427, excepting the South 134.77 feet corner in Section 21, Township 36 South, Range 7 East of the Willamette Meridian.

TOTTEN MEADOWS

PARCEL I. South Half and South Half of the North Half of Section 18, Township 37 S., Range 7 E.W.M.

PARCEL II. Beginning at the Southeast corner of the North Half of the North Half of Section 18, Township 37 S., Range 7 E.W.M; thence North along the East line of the North Half of the North Half of said Section 18, 570 feet; thence West 497 feet; thence South 570 feet; thence East 497 feet to the point of beginning.

PARCEL III. Lot 4 (being the NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 19, Township 37 South, Range 7, E.W.M., containing 42.54 acres, more or less.

STIEGER BUTTE

PARCEL I. N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$, and a portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ described as follows:

Beginning at the NE corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$; thence South 662.16 feet; thence N88°55'49" W 912.79 feet to the East right of way of Highway 62; thence North along the East right of way line of said Highway 62 to the North line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$; thence East to the point of beginning.

All in Section 19, Township 34 South, Range 7 East of the Willamette Meridian.

PARCEL II. SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, North 10 acres of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, and the SE $\frac{1}{4}$ SW $\frac{1}{4}$, excepting therefrom the West 660 feet lying South of State Highway 422, all in Section 20, Township 34 South, Range 7 East of the Willamette Meridian.

PARCEL III. S $\frac{1}{2}$ of Section 21, Township 34 South, Range 7 East of the Willamette Meridian.

PARCEL IV. E $\frac{1}{2}$, SW $\frac{1}{2}$ SE $\frac{1}{2}$, and that portion of the E $\frac{1}{2}$ SE $\frac{1}{2}$ lying West of Highway 97 and South of Highway 422 in Section 28, Township 34 South, Range 7 East of the Willamette Meridian.

PARCEL V. NE $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{2}$, NE $\frac{1}{2}$ NW $\frac{1}{2}$ excepting the West 660 feet thereof, S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{2}$, S $\frac{1}{2}$ SE $\frac{1}{2}$ excepting a parcel of land continuing 0.517 acres, more or less, described as follows:

Commencing at the Section corner common to Sections 28, 29, 32 and 33 in Township 34 South, Range 7 EWM; thence North 80°54'10" West, 614.85 feet to the true point of beginning; thence S52°29'30" W 150.00 feet; thence N 37°30'30" W 150.00 feet; thence N 52°29'30" E 150.00 feet; thence S 37°30'30" E 150.00 feet to the true point of beginning.

All in Section 29, Township 34 South, Range 7 East of the Willamette Meridian.

PARCEL VI. N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, and the SW $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 32, Township 34 South, Range 7 East of the Willamette Meridian.

PARCEL VII. N $\frac{1}{2}$ NW $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{2}$, N $\frac{1}{2}$ NE $\frac{1}{2}$ lying West of Highway 97, excepting the South 334.77 feet thereof in Section 33, Township 34 South, Range 7 East of the Willamette Meridian.

15681

PARCEL VIII. Government Lot 16 lying Easterly of the Chiloquin-Sprague River Highway in Section 34, Township 34 South, Range 7 East of the Willamette Meridian.

THE RAPIDS

PARCEL I. All of Government Lots 2, 3, 9, 14, 40 and 41 in Section 21, Township 35 South, Range 7 East of the Willamette Meridian lying East of Highway 97 and Northwesterly of the Williamson River.

PARCEL II. Government Lots 38 and 39 and portions of Government Lots 32 and 33 described as follows:

Beginning at the point that the South line of Government Lot 33 intersects with the East right of way line of Highway 97; thence North along said right of way line a distance of 326.00 feet; thence North 62°07' East a distance of 395.00 feet to the center of an existing water well; thence continuing North 62°07' East 234.30 feet to a 3/4 inch iron pipe which bears South 40.00 feet distant from the North boundary of Lot 33; thence East parallel with aforesaid boundary 454.20 feet to the East boundary of Lot 33; thence along the East boundary of Lot 33 a distance of 95.0 feet; thence in Lot 32, East 107.27 feet; thence South 32°20' East 381.50 feet; thence South 9°31' West 205.30 feet to a 2 inch iron pipe on the South boundary of Lot 32; thence West along the South boundary of Lots 32 and 33 a distance of 1301.30 feet more or less to the point of beginning. All in Section 16, Township 35 South, Range 7 E.W.M.

ASSORTED

PARCEL I. That portion of the NW¼NW¼ of Section 34, Township 34 South, Range 7 E.W.M. lying West of Highway 422 and South of Lot 14, Block 4 of Tract 1019 Winema Peninsula Unit No. 2.

PARCEL II. W½NE¼NW¼ of Section 32, Township 30 South, Range 8 E.W.M.

PARCEL III. Lot 13, Block 49, Nimrod River Park Fourth Addition

PARCEL IV. Government Lots 27, 28, 29 and 30 in Section 5, Township 35 South, Range 7 East of the Willamette Meridian, LESS that portion described as the Northerly 523 feet of Government Lots 27 and 28 lying Westerly of the Highway 62 right of way, Section 5, Township 35 South, Range 7 East of the Willamette Meridian, being 21.84 acres.

WINEMA PENINSULA

PARCEL I. Lots 5, 14, 21, 22 and 26, Block 7; Lots 10, 11, 12, and 15, Block 8; Lot 10, Block 9; Tract No. 1019 Winema Peninsula-Unit No. 2.

PARCEL II. Lots 20, 21, 22, 23, 24, 25 and 26, Block 9; Lots 2, 3, 4, and 5, Block 11, Tract No. 1050 Winema Peninsula-Unit No. 3.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co.
of Sept. A.D., 19 88 at 10:49 o'clock A.M., and duly recorded in Vol. M88
of Mortgages on Page 15674
FEE \$43.00
By Evelyn Biehn County Clerk
Pauline Mullendore