

## MORTGAGE

DATE: SEPT. 23, 1988PARTIES: EDMUND M. MC AULIFFE  
Box 471, Malin, Oregon 97632

MORTGAGOR

JANE A. BEWLEY  
50 Bellvue Ave.  
Piedmont, CA 94611

MORTGAGEE

## AGREEMENTS

1. CONVEYANCE. For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, her successors and assigns, the following real property, situate in Klamath County, Oregon:

SW1/2SE 1/4 of Section 11, Township 41 South,  
Range 12 East of the Willamette Meridian, EXCEPT  
30 foot right of way along the North line thereof.  
NW1/4NE1/4 of Section 14. Township 41 South,  
Range 12, East of the Willamette Meridian, EXCEPT  
30 foot right of way along the South line thereof.

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.

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 loan in the sum of \$150,000.00, evidenced by a promissory note from Mortgagor to Mortgagee, 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. Provided, however, only \$150,000 of the balance of this note is secured by this mortgage.

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

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premises are free and clear of liens and encumbrances, excepting acreage and use limitations under provisions of the United States Statutes and regulations issued thereunder, and excepting rights of the public in and to any portion of said premises lying within the limits of public roads and highways, and encumbrances of record and those apparent on the land.

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 the note executed in connection with 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.

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.

5.3 **INSURANCE AND OTHER CHARGES.** Mortgagor will pay when due all premiums upon insurance policies on the mortgaged property, all licenses or fees legally owing by it, and all rentals or other charges for the use of any leased ground or premises upon which any of the mortgaged premises may be located.

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 mortgaged 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.

5.5 RESERVE FOR INSURANCE AND TAXES. In the event Mortgagor fails to pay when due any taxes or insurance premiums, Mortgagor agrees to pay Mortgagee, in addition to the past due taxes or insurance premiums, with and in addition to the monthly payments of principal and interest on any indebtedness, one-twelfth (1/12th) of the annual taxes and insurance premiums as reasonably estimated by Mortgagee.

The reserve payments shall be held by Mortgagee in a separate account, to pay the taxes and insurance premiums when they become due and payable, and Mortgagee shall not be obligated to pay Mortgagor interest or other earnings which may be derived from Mortgagee's use of the funds in the reserve account.

If at any time, Mortgagee determines that the funds in the reserve account will not be sufficient to pay taxes or insurance premiums when due, Mortgagor agrees to pay Mortgagee, on demand, an additional monthly payment equal to a pro rata portion of the deficiency corresponding to the number of months from the date of Mortgagee's determination of the deficiency to the date upon which the charges become due and payable. Mortgagor hereby authorizes Mortgagee to pay the taxes and insurance premiums in the amounts shown by the statements thereof furnished by the collector of the taxes or insurance carriers or their representatives.

#### 6. CONDITION OF MORTGAGED PREMISES.

6.1 REPAIRS AND MAINTENANCE. Mortgagor will keep all improvements erected on the mortgaged premises in good order and repair.

6.2 FIRST-CLASS CONDITION. Mortgagor will maintain the mortgaged premises in first-class condition.

6.3 WASTE. Mortgagor will not permit waste of the mortgaged premises or do or suffer anything to be done to depreciate or impair the value of the mortgaged 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 mortgaged premises which will materially decrease the value of the same. Before making any changes in or alterations to the improvements, Mortgagor shall give notice to Mortgagee of the nature and extent of the changes or alterations and shall provide evidence of Mortgagor's ability to finance the changes or alterations.

6.5 REMOVAL OF IMPROVEMENTS PROHIBITED. Mortgagor will not remove or permit to be removed any improvements from the mortgaged premises, without the prior written consent of Mortgagee.

6.6 RIGHT OF INSPECTION. Mortgagee shall have the right to enter upon the mortgaged premises at all reasonable times to determine

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Mortgagor's compliance with this Mortgage.

## 7. INSURANCE

7.1 INSURANCE REQUIRED. Mortgagor will keep the building improvements now erected, or which may hereafter be erected, on the mortgaged 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 (10) days' notice to Mortgagee before cancellation. Mortgagor agrees to notify Mortgagee of any casualty affecting the mortgaged premises.

7.2 DISPOSITION OF INSURANCE PROCEEDS. Any insurance funds paid to Mortgagee as a result of damage or loss to the mortgaged premises covered may, at the option of Mortgagee, be released to Mortgagor to be expended in the repair, restoration or replacement of the mortgaged premises so damaged or lost, or be retained by Mortgagee and be applied toward the payment of all or such of the items of indebtedness secured as Mortgagee may elect. Mortgagor hereby appoints Mortgagee agent to collect all amounts payable under the policies to Mortgagor and amounts retained by Mortgagee, after the cost of collection, shall be applied to payment of the principal sum and interest thereon, and other sums secured by this Mortgage.

## 8. 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.

## 9. 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.

#### 10. 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. Mortgagee 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. The Mortgage shall stand as security for payment of these sums and interest in like manner and effect as for payment of the indebtedness secured.

#### 11. CONDEMNATION

If the mortgaged 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, including any expenses and attorney fees incurred by Mortgagee on account of such condemnation, are hereby assigned by Mortgagor to Mortgagee and shall be paid forthwith to Mortgagee to be applied by it to the payment of such expenses and attorney fees and any balance on account of the last maturing portion of the indebtedness secured hereby.

#### 12. MISCELLANEOUS

12.1 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.

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

12.3 NOTICES. Whenever any notice, demand or request is required by the terms of this Mortgage or by any law now in existence or hereafter

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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.

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

12.5 TIME OF ESSENCE. Time is of the essence of this Mortgage.

12.6 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.

The parties have executed this agreement as of the date first written above.

Edmond M. McAuliffe  
MORTGAGOR

STATE OF OREGON )  
County of Klamath ) ss.  
)

On September 23 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Edmond M. McAuliffe, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed it.

(SEAL)

Robert D. Simon  
Notary Public for Oregon  
My Commission Expires: 10/9/92

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Boivin & Uerlings  
of Sept. A.D., 1988 at 10:01 o'clock A.M., and duly recorded in Vol. M88  
of Mortgages on Page 16051

FEE \$33.00

Return: Boivin & Uerlings

110 N. 6th St., Klamath Falls, Or, 97601

Evelyn Biehn  
By Pauline M. Mendenhall County Clerk

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