

Aspen 33038

Vol. m89 Page 4841

TN 98321

THIS MORTGAGE, Made this 10<sup>th</sup> day of March 1989 by  
 RODNEY R. LYON and MARIE M. LYON, husband and wife, whose address is  
 HC 62, Box 112-B, Malin, Oregon, 97632.

Mortgagor, to  
 JAMES L. ECKHARDT, whose address is 723 E. Karcher Road, Nampa, Idaho,  
 83651. Mortgagee.

WITNESSETH, That said mortgagor, in consideration of THREE HUNDRED FIFTY-ONE  
THOUSAND AND NO/100THS-----(\$351,000.00)-----Dollars,  
 to him paid by said mortgagee, does hereby grant, bargain, sell and convey unto said mortgagee, his heirs, ex-  
 ecutors, administrators and assigns, that certain real property situated in Klamath County,  
 State of Oregon, bounded and described ~~as follows~~ on Exhibit "A" attached hereto:

\*holding as tenants by the entirety

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  
 heirs, executors, administrators and assigns forever.

This mortgage is intended to secure the payment of a promissory note....., of which the  
 following is a substantial copy:

Attached as Exhibit "B"

The date of maturity of the debt secured by this mortgage is the date on which the last scheduled principal payment be-  
 comes due, to-wit: May 1 September 15 1996. (Seven years from date)

And said mortgagor covenants to and with the mortgagee, his heirs, executors, administrators and assigns, that he is lawfully  
 seized in fee simple of said premises and has a valid, unencumbered title thereto

and will warrant and forever defend the same against all persons; that he will pay said note, principal and interest, according to  
 the terms thereof; that while any part of said note remains unpaid he will pay all taxes, assessments and other charges of every  
 nature which may be levied or assessed against said property, or this mortgage or the note above described, when due and pay-  
 able and before the same may become delinquent; that he will promptly pay and satisfy any and all liens or encumbrances that  
 are or may become liens on the premises or any part thereof superior to the lien of this mortgage; that he will keep the buildings  
 now on or which hereafter may be erected on the said premises continuously insured against loss or damage by fire and such other  
 hazards as the mortgagee may from time to time require, in an amount not less than the original principal sum of the note or  
 obligation secured by this mortgage, in a company or companies acceptable to the mortgagee, with loss payable first to the mort-  
 gagee and then to the mortgagor as their respective interests may appear; all policies of insurance shall be delivered to the mort-  
 gagee as soon as insured. Now if the mortgagor shall fail for any reason to procure any such insurance and to deliver said policies  
 to the mortgagee at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on said buildings,  
 the mortgagee may procure the same at mortgagor's expense; that he will keep the buildings and improvements on said premises  
 in good repair and will not commit or suffer any waste of said premises. 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 satis-  
 factory 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.

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The mortgagor warrants that the proceeds of the loan represented by the above described note and this mortgage are:  
 (a)\* primarily for mortgagor's personal, family, household or agricultural purposes (see Important Notice below),  
 (b) for an organization or (even if mortgagor is a natural person) are for business or commercial purposes other than agricultural purposes.

Now, therefore, it said mortgagor shall keep and perform the covenants herein contained and shall pay said note according to its terms, this conveyance shall be void, but otherwise shall remain in full force as a mortgage to secure the performance of all of said covenants and the payment of said note; it being agreed that a failure to perform any covenant herein, or if a proceeding of any kind be taken to foreclose any lien on said premises or any part thereof, the mortgagee shall have the option to declare the whole amount unpaid on said note or on this mortgage at once due and payable, and this mortgage may be foreclosed at any time thereafter. And if the mortgagor shall fail to pay any taxes or charges or any lien, encumbrance or insurance premium as above provided for, the mortgagee may at his option do so, and any payment so made shall be added to and become a part of the debt secured by this mortgage, and shall bear interest at the same rate as said note without waiver, however, of any right arising to the mortgagee for breach of covenant. And this mortgage may be foreclosed for principal, interest and all sums paid by the mortgagee at any time while the mortgagor neglects to repay any sums so paid by the mortgagee. In the event of any suit or action being instituted to foreclose this mortgage, the mortgagor agrees to pay all reasonable costs incurred by the mortgagee for title reports and title search, all statutory costs and disbursements and such further sum as the trial court may adjudge reasonable as plaintiff's attorney's fees in such suit or action, and if an appeal is taken from any judgment or decree entered therein mortgagor further promises to pay such sum as the appellate court shall adjudge reasonable as plaintiff's attorney's fees on such appeal, all sums to be secured by the lien of this mortgage and included in the decree of foreclosure.

Each and all of the covenants and agreements herein contained shall apply to and bind the heirs, executors, administrators and assigns of said mortgagor and of said mortgagee respectively.

In case suit or action is commenced to foreclose this mortgage, the Court, may upon motion of the mortgagee, appoint a receiver to collect the rents and profits arising out of said premises during the pendency of such foreclosure, and apply the same, after first deducting all of said receiver's proper charges and expenses, to the payment of the amount due under this mortgage.

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 pronoun shall be taken to mean and include the plural, the masculine, 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, said mortgagor has hereunto set his hand the day and year first above written.

*Rodney R. Lyon*  
 RODNEY R. LYON

*Marie M. Lyon*  
 MARIE M. LYON

\*IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; if warranty (a) is applicable and if the mortgagee is a creditor, as such word is defined in the Truth-in-Lending Act and Regulation Z, the mortgagee MUST comply with the Act and Regulation by making required disclosures; for this purpose, if this instrument is to be a FIRST lien to finance the purchase of a dwelling, use Stevens-Ness Form No. 1305 or equivalent; if this instrument is NOT to be a first lien, use Stevens-Ness Form No. 1306, or equivalent.

Idaho  
 STATE OF OREGON,

County of Ada

SS.

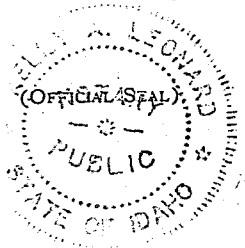
March 10, 1989

Personally appeared the above named Rodney R. Lyon and Marie M. Lyon

and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

*Kelly A. Leonard*  
 Notary Public for Oregon Idaho  
 My commission expires: 2-26-94



## MORTGAGE

(FORM No. 105A)

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

TO

SPACE RESERVED  
 FOR  
 RECORDER'S USE

AFTER RECORDING RETURN TO

A.T.C.

STATE OF OREGON,  
 County of } SS.

I certify that the within instrument was received for record on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 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.

By \_\_\_\_\_ NAME \_\_\_\_\_ TITLE \_\_\_\_\_ Deputy

## EXHIBIT "A"

In Township 40 South, Range 12 East of the Willamette Meridian, in the County of Klamath, State of Oregon:

- Section 22: SE 1/4 SE 1/4  
Section 23: SW 1/4 SW 1/4  
Section 26: NW 1/4 NW 1/4  
Section 27: NE 1/4 NE 1/4  
Section 36: All, Except the SE 1/4 NE 1/4 and NE 1/4 SW 1/4  
Section 35: All, Except the NE 1/4 NE 1/4 and SW 1/4 SW 1/4  
Section 34: NE 1/4 SE 1/4

In Township 41 South, Range 12 East of the Willamette Meridian, in the County of Klamath, State of Oregon:

- Section 1: SE 1/4 NE 1/4  
Section 2: NE 1/4, E 1/2 NW 1/4 and N 1/2 NE 1/4 SW 1/4

PURCHASE MONEY PROMISSORY NOTE

Maker: Rodney R. Lyon  
Marie M. Lyon

Date of Making: March 10, 1989

Place of Making: Malin, Oregon

Principal Amount: \$351,000.00

Interest Rate: 12% per annum

Due Date: ~~September~~ <sup>RL ML</sup> May 15, 1996

1. Terms. RODNEY R. LYON and MARIE M. LYON ("Buyer"), for value received, promises to pay to the order of JAMES L. ECKHARDT (the "Holder"), at 723 E. Karcher Road, Nampa, Idaho, 83651, or such other place or places as may be designated by Holder, the principal sum of THREE HUNDRED FIFTY-ONE THOUSAND AND NO/100THS DOLLARS (\$351,000.00), in lawful currency of the United States of America together with interest thereon at the rate provided herein, as follows:

(a) Buyer shall make the following payments:

- 1A.) <sup>RL ML</sup> \$5,000 due on or before 3/24/1989; <sup>AS follows: RL ML</sup> ~~upon the earlier of the sale of Buyer's potato crop currently in storage or June 1, 1989;~~
- 1b.) <sup>RL ML</sup> \$5,000 due on or before 6/30/1989;
- 1c.) <sup>RL ML</sup> \$10,000 due on or before 9/1/1989, this \$10,000 payment is additionally secured by assignment of rents described herein as Exhibit "C"
- (2) The sum of \$41,500 on <sup>September</sup> ~~May~~ 15 1989;
- (3) The sum of \$41,500 on <sup>September</sup> ~~May~~ 15 1990;
- (4) The sum of \$61,000 on <sup>September</sup> ~~May~~ 15 1991; <sup>RL ML</sup>
- (5) The sum of \$65,500 on <sup>September</sup> ~~May~~ 15 1992;
- (6) The sum of \$65,500 on <sup>September</sup> ~~May~~ 15 1993;
- (7) The sum of \$65,500 on <sup>September</sup> ~~May~~ 15 1994;
- (8) The sum of \$65,500 on <sup>September</sup> ~~May~~ 15 1995;
- (9) The remaining balance of principal and interest in full on <sup>September</sup> ~~May~~ 15 1996. Buyer acknowledges that this is a balloon payment of approximately \$112,975.

(b) The unpaid principal amount hereof from time to time outstanding shall bear interest from and after the

Date of Making at the rate of twelve percent (12%) per annum (365 day year).

(c) If any payment hereunder is not paid within ten (10) days of the required payment date, then Buyer shall pay a late charge equal to two and one-half percent (2-1/2%) of the payment and if any payment is not paid together with the late charge, if any, within thirty (30) days of the required payment date, then all sums evidenced hereby shall thereafter bear interest at the rate of fifteen percent (15%) per annum ("default interest") until paid or until the default is otherwise properly cured by payment of all past due payment(s), late charges, default interest and costs incurred.

(d) All payments made hereunder shall be applied first to fees, charges, including late charges and costs, if any, then to interest and then to principal.

2. Prepayment. Buyer shall have the right of prepayment at any time without penalty.

3. Immediately Available Funds. All payments made under this Note, whether on account of the principal sum, interest, or any other sum permitted to be assessed hereunder, if any, shall be made in immediately available funds without setoff or counterclaim and free and clear of and without deduction for or on account of all present and future fees, deductions, withholdings, restrictions or conditions of whatsoever nature, if any, now or hereafter imposed, levied, calculated, withheld or assessed. "Immediately available funds" shall mean funds tendered without conditions or restrictions on release and in a medium which is subject to immediate deposit and/or credit without confirmation, clearance period, waiting or other delay for or restriction on immediate use, or negotiation. Acceptance of any payment made otherwise than in immediately available funds shall not constitute a waiver of the right to require payment in immediately available funds.

4. Events Of Default. If any of the following events (each an "Event of Default") shall occur:

(a) the payment of principal, interest or any other sum payable under this Note shall not be paid on or before the date on which the same is due and payable; or

(b) Buyer shall suffer insolvency, appointment of a receiver for any part of his property, assignment for the benefit of creditors, calling of a meeting of creditors, appointment of a committee of creditors or offering of an extension to creditors by, for, or of Buyer, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Buyer;

then and in any such event the Holder of this Note shall have the right to declare, by giving notice to Buyer, the entire unpaid principal of this Note, all of the interest accrued on the unpaid principal of this Note and all other amounts payable on or in respect of this Note or the indebtedness evidenced hereby to be immediately due and payable, whereupon the entire unpaid principal of this Note, all of the interest accrued on the unpaid principal of this Note and all other amounts payable on or in respect of this Note or the indebtedness evidenced hereby shall forthwith become and be due and payable to the Holder of this Note without notice, presentment, demand, protest, notice of protest or any other formalities of any kind, all of which are hereby expressly and irrevocably waived by Buyer.

5. General Provisions.

(a) The failure of the Holder of this Note to exercise all or any of its rights, remedies, powers or privileges hereunder in any instance shall not constitute a waiver thereof in that or in any other instance.

(b) Buyer will reimburse the Holder of this Note for all its reasonable out-of-pocket expenses, including but not limited to the reasonable attorney's fees and disbursements of Holder's counsel and other reasonable attorneys' fees and disbursements, incurred or expended in connection with the administration of this Note or any amendment hereof, or with the enforcement of any obligations or the satisfaction of any indebtedness of Buyer hereunder, or in connection with any litigation, proceeding or dispute hereunder in any way related to the credit hereunder. Without limiting the generality of the foregoing, should all or any part of the indebtedness represented by this Note be collected by action at law, or in bankruptcy, insolvency, receivership or other court proceedings, or should this Note be placed in the hands of attorneys for collection after default, Buyer hereby promises to pay to the Holder of this Note, upon demand by the Holder hereof at any time, in addition to principal, interest (including default interest) and all other amounts payable on or in respect of this Note or the indebtedness evidenced hereby, all court costs and reasonable attorneys' fees and all other reasonable collection charges and expenses incurred or sustained by the Holder of this Note.

(c) Buyer hereby irrevocably waives notice of acceptance, presentment, notice of nonpayment, protest, notice of protest, suit and all other conditions precedent in connection with the delivery, acceptance, collection and/or enforcement of this Note.

(d) All notices, demands or other communications to or upon Buyer pursuant to this Note shall be in writing, either delivered by hand or sent to Buyer by first-class mail, postage prepaid, addressed to Buyer at HC 62, Box 112B, Malin, Oregon, 97632, or to such other address as Buyer shall designate in a written notice to the Holder of this Note.

(e) Buyer agrees that the Holder hereof may extend the time of payment or otherwise modify the terms of payment of any part or the whole of the indebtedness evidenced hereby and such action shall not alter nor diminish Buyer's liability hereunder or the enforceability of this Note.

(f) By signing or endorsing this Note, Buyer binds himself as a principal and not as a surety.

(g) All of the terms, covenants, provisions and conditions herein contained are made on behalf of, and shall apply to and bind the undersigned and his successors and assigns.

(h) This Note shall be governed by Oregon law.

(i) This is a purchase money note and evidences the obligation of Buyer to the Holder arising out of the purchase of a potato storage unit and shall be entitled to the rights and priorities provided by law for purchase money indebtedness.

(j) This Note is secured by a deed of trust and a mortgage on certain parcels of real property and the improvements thereon located in Klamath County, Oregon. The holder specifically reserves the right to foreclose on the storage unit and related land purchased by Maker from Holder without proceeding against any other collateral held by Holder from time to time.

EXECUTED effective as of the Date of Making set forth above.

STATE OF OREGON, ss.  
County of Klamath

Filed for record at request of:

Aspen Title Co.  
on this 22nd day of March A.D., 19 89  
at 2:59 o'clock P.M. and duly recorded  
in Vol. M89 of Mortgages Page 4841  
County Clerk  
Evelyn Biehn  
By Pauline Muelenbelle  
Deputy.

Fee, \$38.00

  
RODNEY R. LYON

  
MARIE M. LYON