

2862

Aspen #01033497
MORTGAGE

DATE: July 20, 1989

PARTIES: THORNTON E. HAMM
1527 Wilford Ave.
Klamath Falls, OR 97601

MORTGAGOR

J. FINLEY and M. SPENCER, TRUSTEES
C/O The Northern Trust Company
Att: David L. Gerber, Second Vice President (B-3)
50 South LaSalle Street
Chicago, IL 60675

MORTGAGEE

SECTION 1: CONVEYANCE

For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the following-described real property, situated in the County of Klamath, State of Oregon, to wit:

A parcel of land in the NE1/4 SW1/4 in Section 7, Township 38 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at the center of said Section 7; thence North 89 degrees 49' West 480.5 feet to the intersection with the West line of the Dalles-California Highway; thence South 6 degrees 02' West along said West line of the Highway 870.3 feet to the Northeast corner of the property herein conveyed; thence North 89 degrees 49' West, 486.54 feet; thence South 6 degrees 02' West 90.0 feet; thence South 89 degrees 49' East 486.54 feet to the West line of the said Highway; thence North 6 degrees 02' East along said Highway 90.0 feet to the point of beginning.

Beginning at a point on the Westerly right of way line of the Dalles-California Highway, which point is 1627.2 feet North 6 degrees 02' East from a point on the Section line between Sections 7 and 18, Township 38 South, Range 9 East of the

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Willamette Meridian, said point being 770.8 feet North 89 degrees 49' West from the quarter section corner between Sections 7 and 18; running thence North 89 degrees 49' West 486.54 feet; thence North 6 degrees 02' East 90.0 feet; thence South 89 degrees 49' East 486.54 feet; thence South 6 degrees 02' West 90.0 feet to the point of beginning.

EXCEPTING THEREFROM the following:

A parcel of land situated in the SW1/4 of Section 7, Township 38 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Commencing at a point on the Westerly right of way line of Wocus Road (formerly Dalles-California Highway), said point being North 06 degrees 02' 00" East 1626.81 feet from a point which is North 89 degrees 41' 21" West, 770.34 feet from the quarter corner common to Sections 7 and 18 of said Township and Range; thence North 89 degrees 49' 00" West 243.27 feet, along the South line of the property described in Klamath County Deed Records Volume M80 at page 9997, to the true point of beginning of this description; thence North 89 degrees 49' 00" West 243.27 feet; thence North 06 degrees 02' 00" East 180.00 feet; thence South 89 degrees 49' 00" East 243.27 feet; thence South 06 degrees 02' 00" West 180.00 feet to the true point of beginning.

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.

EXCEPTION:

1. Rights of the public in and to any portion of the herein described premises lying with the boundaries of roads or highways.

SECTION 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 or loans in the principal amount of Forty-One Thousand dollars (\$41,000.00), evidenced by the

following describe promissory note from Mortgagor to Mortgagees:

DATE OF NOTE	PRINCIPAL AMOUNT	MATURITY DATE
July <u>20</u> , 1989	\$41,000.00	July 20, 2009

together with interest payable on the unpaid balances thereof at the rate specified in the note, any and all renewals, modifications, substitutions, and extensions thereof. 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 any liens and encumbrances, except those set forth above in Section 2.

1. Mortgagor will defend Mortgagee's rights against any liens and encumbrances other than those listed in this 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. 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 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 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 the foreclosure or sale under the lien.

5.2 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 9 percent per annum from the date of the payment.

SECTION 6. CONDITIONS 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 refinance 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 Mortgagor's compliance with this Mortgage.

SECTION 7. INSURANCE

7.1 Insurance Required. Mortgagee 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 interest 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.

SECTION 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 to 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 9. DEFAULT

9.1 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 any court of competent jurisdiction or appointment of a receiver for any substantial portion of Mortgagor's property.

9.2 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 of 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 judgement 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, easement or restriction, 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.

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 expense 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 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 or Sale. Upon the Sale, or other voluntary or involuntary disposition of the property the whole of the principal sum and the interest thereon, shall immediately become due and payable without further notice.

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.

DATED:

July 20, 1989 - 11:36 am.

Thornton E. Hamm
THORNTON E. HAMM MORTGAGOR

Robert D. Brown atty in fact
J. FINLEY MORTGAGEE

M. SPENCER

MORTGAGEE

STATE OF OREGON)
) ss.
County of Klamath)

The foregoing instrument was acknowledged before me this 20th day of July, 1989, by Thornton E. Hamm.

Charles T. Addington
NOTARY PUBLIC FOR OREGON
My Commission Expires: 3-22-93



13349

STATE OF OREGON)
) ss.
 County of Klamath)

The foregoing instrument was acknowledged before me this
20th day of July, 1989, by Julie Hamm Finley
Robert D. Boivin, atty in fact for Julie Hamm Finley

Charles L. Aldington
 NOTARY PUBLIC FOR Oregon
 My Commission Expires 3/22/92

STATE OF _____)
) ss.
 County of _____)

The foregoing instrument was acknowledged before me this
 _____ day of _____, 1989, by M. Spencer

NOTARY PUBLIC FOR _____
 My Commission Expires: _____

Return To:

Robert D. Boivin

110 N. 6th St.

Klamath Falls, OR 97601

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title Co. the 21st day
 of July A.D., 19 89 at 12:18 o'clock P M., and duly recorded in Vol. M89
 of Mortgages on Page 13338

Evelyn Biehn County Clerk
 By Pauline Mullenbaker

FEE \$63.00