

WHEN RECORDED MAIL TO

The Commercial Bank
PO Box 428 Salem, OR 97308
SEND TAX NOTICE TO

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MORTGAGETHIS MORTGAGE IS DATED September 25, 1990 BETWEEN

Steven J. Hilger, Jr. and Mary A. Hilger
HC BOX 1037 LAPINE, ORE. 97739

("Grantor"); WHOSE ADDRESS IS

("Lender").

AND The Commercial Bank

Grantor is the owner of the following-described real property located in the County of Klamath
and the State of Oregon (the "Real Property"):
Lot 4 in Block 5, WAGON TRAIL ACRES NO. ONE, FIRST ADDITION, Klamath County, Oregon.

Grantor has agreed to provide the Real Property as collateral to secure an obligation of ☒ Grantor ☐ \$29,000.00. This amount is
("Obligor") in the principal amount of \$ 29,000.00.

repayable with interest according to the terms of a promissory note or other credit agreement given to evidence such Indebtedness dated 09-25-90. The term "Credit Agreement" as used in this Mortgage means the promissory note or other credit agreement describing the repayment terms of the Indebtedness, and any notes, agreements, or documents given in renewal, modification, extension or substitution for the promissory note or credit agreement originally issued. The rate of interest on the Credit Agreement is subject to indexing, adjustment, renewal, or renegotiation.

The term "Indebtedness" as used in this Mortgage means all principal and interest payable under the Credit Agreement, plus (a) any amounts expended or advanced by Lender to discharge obligations of Grantor, and (b) any expenses incurred by Lender to enforce obligations of Grantor hereunder, as permitted under this Mortgage, together with interest thereon at the Credit Agreement rate.

The term "Related Documents" as used in this Mortgage means all promissory notes, loan agreements, guaranties, security agreements and other documents executed in connection with this Mortgage or the Indebtedness, whether already existing or executed now or later.

The term "Grantor" is used in this Mortgage for convenience of the parties, and use of that term shall not affect the liability of any such Grantor on the Credit Agreement. Any Grantor who co-signs this Mortgage, but does not execute the Credit Agreement: (a) is co-signing this Mortgage only to grant and convey that Grantor's interest in the Real Property to Lender under the terms of this Mortgage; (b) is not personally liable under the Credit Agreement except as otherwise provided by law or contract; (c) agrees that Lender and any other Grantor hereunder may agree to extend, modify, forebear, release any collateral, or make any other accommodations or amendments with regard to the terms of this Mortgage or the Credit Agreement, without notice to the Grantor, without that Grantor's consent, and without releasing that Grantor or modifying this Mortgage as to that Grantor's interest in the Real Property; and (d) acknowledges that Lender would not have entered into the lending relationship relating to the Indebtedness except for reliance upon all of the obligations of all of the Grantors under this Mortgage.

To secure payment of the Indebtedness with interest thereon in strict accordance with the terms of the Credit Agreement, or any other agreements evidencing part of the Indebtedness, and to secure performance by Grantor of the covenants contained in this Mortgage and Related Documents, Grantor mortgages and conveys to Lender the Real Property with all appurtenances, all existing or future improvements, all rights relating to the Real Property (including minerals, oil, gas, water, and the like), and all ditch rights (including stock in entities with ditch or irrigation rights). Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all rents, revenue, income, issues, and profits ("Income") from the Real Property described above. Grantor grants Lender a Uniform Commercial Code security interest in the Income and in all equipment, fixtures, furnishings, and other articles of personal property owned by Grantor, now or subsequently attached or affixed to the Real Property described above, together with all accessions, parts, or additions to, or replacements of, and all substitutions for any such property, and together with all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition, (the "Personal Property"). The Real Property and Personal Property are collectively referred to as the "Mortgaged Property."

(Check if applicable):

- ☒ There is a mobile home on the Real Property, which is covered by this security instrument, and which is and shall remain (check one): ☒ Personal Property. ☐ Real Property.
- ☒ This Mortgage secures a Credit Agreement under which the currently scheduled final payment of principal and interest will be due on or before October 7, 1995. This Mortgage also secures any renewal, modification, extension, or substitution for the Credit Agreement.
- ☐ This Mortgage supports a revolving line of credit, which obligates Lender to make advances to Grantor (or Obligor) so long as Grantor (or Obligor) complies with the terms of the Credit Agreement.
- ☒ Indebtedness, as defined above, includes, in addition to the principal amount specified above, any future amounts that Lender may in its discretion loan to Grantor (or Obligor), together with interest thereon; however, not to exceed ☐ \$ ☒ unlimited.
- ☐ This Mortgage secures a guaranty between Grantor and Lender, and does not directly secure the obligations due Lender under the Credit Agreement. Grantor waives any rights or defenses arising by reason of (a) any "one-action" or "anti-deficiency" law, or any other law that may prevent Lender from bringing any action or claim for deficiency against Grantor; (b) any election of remedies by lender which may limit Grantor's rights to proceed against any party indebted under the Credit Agreement; or (c) any disability or defense of any party indebted under the Credit Agreement, any other guarantor or any other person by reason of cessation of the Indebtedness due under the Credit Agreement for any reason other than full payment thereof.

This Mortgage, including the assignment of Income and the security interest, is given to secure payment of the Indebtedness and performance of all obligations under the Credit Agreement and all obligations of Grantors under this Mortgage and is given and accepted on the following terms and conditions:

TERMS AND CONDITIONS

1. **Payment and Performance.** Except as provided above, Grantor will pay to Lender promptly when due all amounts secured by this Mortgage and will strictly perform all obligations imposed upon Grantor by this Mortgage.

2. Possession and Maintenance of Property.

2.1 **Possession.** Until in default, Grantor may remain in possession and control of and operate and manage the Mortgaged Property and collect the rents, revenues, income, issues, and profits.

2.2 **Duty to Maintain.** Grantor shall maintain the Mortgaged Property in first class condition and promptly perform all repairs and maintenance necessary to preserve its value.

2.3 **Waste; Nuisance.** Grantor shall neither conduct or permit any nuisance nor commit or suffer any strip or waste on the Mortgaged Property or any portion thereof, including without limitation, removal or alienation by Grantor of the right to remove any timber, minerals (including oil and gas), or gravel or rock products.

2.4 **Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Mortgaged Property without the prior written consent of Lender, which will not be withheld if Grantor makes arrangements satisfactory to Lender to replace any Improvement which Grantor proposes to remove with one of at least equal value. "Improvements" shall include all existing and future buildings, structures, and parking facilities.

2.5 **Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Mortgaged Property at all reasonable times to attend to Lender's interest and inspect the Mortgaged Property.

2.6 **Compliance With Governmental Regulations.** Grantor shall promptly comply with all laws, ordinances, and regulations of all governmental authorities applicable to the use or occupancy of the Mortgaged Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and Lender's interest in the Mortgaged Property is not jeopardized. Lender may require Grantor to post adequate security (reasonably satisfactory to Lender) to protect Lender's interest.

2.7 **Duty to Protect.** Grantor shall do all other acts, in addition to those set forth in this section, that from the character and the use of the Mortgaged Property are reasonably necessary to protect and preserve the security.

3. Taxes and Liens.

3.1 **Payment.** Grantor shall pay when due all taxes and assessments against the Mortgaged Property and all claims and demands arising from Grantor's use or occupancy of the Mortgaged Property. Grantor shall pay when due before they become delinquent, all taxes and assessments levied against or on account of the Mortgaged Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Mortgaged Property.

3.2 **Protection of the Mortgaged Property.** Grantor shall not permit any lien prior or equal to the lien of this Mortgage to be imposed upon the Mortgaged Property, except for the lien of taxes and assessments not due, except for the prior indebtedness referred to in Section 12 and except as otherwise provided in Section 3.3.

3.3 **Grantor's Right to Contest.** Grantor may withhold payment of any taxes, assessments, claims, or demands, or may elect to contest any lien if Grantor is in good faith conducting appropriate proceedings to contest the obligation to pay and so long as Lender's interest in the Mortgaged Property is not jeopardized. If the Mortgaged Property is subject to a lien which is not discharged within 15 days after the lien arises or, if a lien is filed, within 15 days after Grantor has notice of the filing, Grantor shall deposit with Lender cash, a sufficient corporate surety bond, or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, or attorneys' fees or other charges that could accrue as a result of foreclosure or sale. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Mortgaged Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

3.4 **Evidence of Payments of Taxes or Assessments.** Grantor shall upon demand furnish to Lender evidence of payment of the taxes or assessments and shall authorize the appropriate county official to deliver to Lender at any time a written statement of the taxes and assessments against the Mortgaged Property.

3.5 **Tax Reserves.** Subject to any limitations set by applicable law, Lender may require Grantor to maintain with Lender reserves for payment of taxes and assessments, which reserves shall be created by advance payment or monthly payments of a sum estimated by Lender to be sufficient to produce, at least 15 days before due, amounts at least equal to the taxes and assessments to be paid. If 15 days before payment is due the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit from Grantor and shall constitute a noninterest-bearing debt from Lender to Grantor, which Lender may satisfy by payment of the taxes and assessments required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

3.6 **Notice to Lender.** Grantor shall notify Lender at least 15 days before the commencement of any work, the furnishing of any services, or the supplying of any materials to the Mortgaged Property, the cost of which is to exceed \$5,000 (if the Real Property is used for nonresidential or commercial purposes or \$1,000 if the Real Property is used as a residence), and the nature of which is such that a construction lien might be asserted on account of the work, services, or materials. Grantor will on request furnish to Lender advance assurances satisfactory to Lender that it can and will pay the costs of such Improvements.

4. Warranties of Grantor.

4.1 **Title.** Grantor warrants that Grantor holds merchantable title to the Mortgaged Property in fee simple, free of all encumbrances other than those enumerated in the title policy or report, if any, issued for the benefit of the Lender in connection with this transaction and accepted by the Lender or as set forth in Section 12.

4.2 **Defense of Title.** Subject to the exceptions in the paragraph above, Grantor warrants and will forever defend the title against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of the Lender under this Mortgage, Grantor shall defend the action at Grantor's expense.

4.3 **Compliance with Laws.** Grantor warrants that its use of the Mortgaged Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

5. Casualty Insurance.

5.1 **Maintenance of Casualty Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurance value basis covering all Improvements on the Mortgaged Property in an amount sufficient to avoid application of any coinsurance clause and with Grantor's loss payable clause in favor of Lender. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of 10 days' prior written notice to Lender.

5.2 **Grantor's Report on Insurance.** If the Mortgaged Property is not used as Grantor's residence, Grantor shall furnish to Lender within 60 days after the close of its fiscal year, a report on each existing policy of insurance showing:

- the name of the insurer;
- the risks insured;
- the amount of the policy;
- the property insured, the then current replacement value of the property, and the manner of determining that cost; and
- the expiration date of the policy.

Grantor shall upon request have an independent appraiser satisfactory to Lender determine the replacement value of the Mortgaged Property at Grantor's expense.

5.3 **Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Mortgaged Property. Lender may make proof of loss if Grantor fails to do so within 15 days of the casualty. Lender may, at its election, apply the proceeds to the reduction of the Indebtedness or the restoration and repair of the Mortgaged Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair and/or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default hereunder. Any proceeds which have not been paid within 180 days after their receipt and which Grantor has not committed to the repair or restoration of the Mortgaged Property shall be used to prepay first accrued interest and then principal of Grantor's Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to the Grantor.

5.4 **Insurance Reserves.** Subject to any limitations set by applicable law, Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments of a sum estimated by Lender to be sufficient to produce, at least 15 days before due, amounts at least equal to the insurance premiums to be paid. If 15 days before payment is due the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit from Grantor and shall constitute a noninterest-bearing debt from Lender to Grantor, which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor.

6. Imposition of Tax by State.

6.1 **State Taxes Covered.** This section shall apply to the following state taxes:

- A specific tax on mortgages or any part of the Indebtedness secured by a mortgage or security agreement.
- A specific tax on the owner of mortgaged property which the taxpayer is authorized or required to deduct from payments on the mortgage.
- A tax on mortgaged property chargeable against the mortgagee or holder of the note secured by the mortgage.
- A specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by mortgagors.

6.2 **Effect of Taxes.** If any state tax to which this section applies is enacted after the date of this Mortgage, this shall constitute an event of default unless the following conditions are met:

- Grantor may lawfully pay the tax or charge imposed by the state tax, and
- Grantor pays or offers to pay the tax or charge within 30 days after notice from Lender that the tax law has been enacted.

7. **Construction Loan.** If some or all of the proceeds of the loan creating the Indebtedness is to be used to construct or complete construction of any Improvements on the Mortgaged Property, the Improvements shall be completed within six (6) months from the date of this Mortgage and security agreement or such other time period as may be set by the Lender and Grantor shall pay all costs and expenses in connection with the work. Lender, at its option, may disburse loan proceeds under such terms and conditions as Lender may deem necessary to insure that the lien of this Mortgage shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipts, bills, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

8. **Due on Sale. Consent by Lender.** Lender may, at its option declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer of all or any part of the Real Property without the Lender's prior written consent. A "sale or transfer" means the conveyance of the Real Property or any right, title, or interest therein, whether legal or equitable, whether voluntary or involuntary, by outright sale; deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three years, lease option contract, or any other method of conveyance of real property interests. If Grantor is a corporation, "transfer" also includes any change in ownership of more than 25 percent of the voting stock of Grantor. If Grantor or any prospective transferee applies to Lender for consent to a transfer, Lender may require such information concerning the prospective transferee as would normally be required from the new loan applicant. Consent by lender to one transfer shall not constitute consent to other transfers or a waiver of this section.

9. **Events of Default.** The following shall constitute events of default:

- (a) Failure of Grantor or Obligor to make any payment required under the Notes when due.
- (b) Failure of Grantor to make any payment required under this Mortgage when due.
- (c) Failure of Grantor to perform any other obligation contained in this Mortgage if:
 - (1) Lender has sent to Grantor a written notice of the failure and the failure has not been cured within 15 days of the notice, or if the default cannot be cured within 15 days; Grantor has not commenced curative action or is not diligently pursuing such curative action; or
 - (2) Grantor has been given notice of a breach of the same provisions of this Mortgage within the preceding 12 months.
- (d) Failure of Grantor within the time required by this Mortgage to make any payment for taxes, insurance, or for any other payment necessary to prevent filing of or to effect discharge of any lien.
- (e) Dissolution or termination of existence (if Grantor is a corporation), insolvency, business failure, appointment of a receiver for any part of the property or assignment for the benefit of creditor by, the commencement of any proceeding under any bankruptcy or insolvency laws by or against, or failure to obtain dismissal or deny the contents of any petition filed under any bankruptcy or insolvency laws within the time required to answer by, Grantor or any of the individuals or entities who are herein collectively referred to as "Grantor."
- (f) Default of Grantor under any prior obligation or instrument securing any prior obligation, or commencement of any suit or other action to foreclose any prior lien.
- (g) If the Real Property has been submitted to unit ownership pursuant to a unit ownership law or any similar law, failure of Grantor to perform any of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder. If Grantor's interest in the Real Property is a leasehold interest and such property has been submitted to unit ownership, any failure of Grantor to perform any of the obligations imposed on him by the lease of the Real Property from his owner, any default from such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Grantor, as a member of an association of unit owners, to take any reasonable action within Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association.
- (h) If the interest of Grantor in the Real Property is a leasehold interest, and a default by Grantor under the terms of the lease, or any other event (whether or not the fault of Grantor) results in the termination of Grantor's leasehold rights.
- (i) Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness of Grantor to Lender, whether made now or later.
- (j) If Lender reasonably deems itself insecure.

10. **Rights and Remedies on Default.**

10.1 **Remedies.** Upon the occurrence of any event of default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies in addition to any other remedy which may be available at law, in equity, or otherwise:

- (a) Lender may declare the entire amount owed by Grantor and/or Obligor, including any prepayment penalty which is required to be paid, immediately due and payable.
- (b) Lender may have a receiver appointed as a matter of right or may exercise all rights of a receiver as a lender-in-possession.
- (c) Lender may, either through a receiver or as a lender-in-possession, take possession of all or any part of the Mortgaged Property, which shall be peaceably surrendered by Grantor.
- (d) Lender shall have the right without notice to Grantor, to take possession of the Mortgaged Property and collect the Income, including amounts past due and unpaid, and apply the net proceeds over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user to make payments of rent or use fees directly to Lender. If Income is collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney in fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either personally, by agent, or through a receiver.
- (e) Lender may obtain a decree foreclosing Grantor's interest in all or any part of the Mortgaged Property.
- (f) Lender may foreclose Grantor's interest in all or any part of the Mortgaged Property by nonjudicial sale, and specifically by "power of sale" or "advertisement and sale" foreclosure as provided by statute.
- (g) If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.
- (h) With respect to any part of the Mortgaged Property that is Personal Property, Lender may exercise the rights and remedies of a secured party under the Uniform Commercial Code of the state in which the Personal Property is located.

10.2 **Receiver.** Lender shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Mortgaged Property exceeds the amount of the Indebtedness, and any receiver appointed may serve without bond. Employment by Lender shall not disqualify a person from serving as receiver.

10.3 **Rights of Receiver or Lender-in-Possession.** Upon taking possession of all or any part of the Mortgaged Property the receiver or Lender may:

- (a) Use, operate, manage, control, and conduct business on the Mortgaged Property and make expenditures for all maintenance and improvements as in its judgment are proper;
- (b) Collect all rents, revenues, income, issues, and profits from the Mortgaged Property and apply such sums to the expenses of use, operation, and management;
- (c) At Lender's option, complete any construction in progress on the Mortgaged Property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans or specifications as Lender deems appropriate.

If the revenues produced by the Mortgaged Property are insufficient to pay expenses, the receiver may borrow, from Lender or otherwise, or Lender may borrow or advance such sums as it deems necessary for the purposes stated in this paragraph; and repayment of such sums shall be secured by this Mortgage. The amounts borrowed or advanced shall bear interest at the highest rate then being charged on any of the Indebtedness from the date of expenditure until repaid and shall be payable by Grantor to Lender on demand.

10.4 **Election of Remedies.** To the extent permitted by law, election by Lender to pursue one remedy shall not exclude resort to any other remedy, and all remedies of Lender under this Mortgage are cumulative and not exclusive. An election to make expenditures or to take action to perform an obligation under paragraph 11.7 shall neither prejudice Lender's right to declare a default nor constitute a waiver of the breached term or of any of the remedies provided in this section.

10.5 **Application of Proceeds from Mortgaged Property.** All proceeds realized from the exercise of Lender's rights and remedies shall be applied as follows:

- (a) To pay the costs of exercising such rights and remedies, including the costs of any sale, the costs of expenses of any receiver or lender-in-possession, and the costs and expenses provided for in paragraph 11.3;
- (b) To pay all amounts owed by Grantor payment of which is secured by this Mortgage;
- (c) The overplus, if any, shall be paid to the clerk of the court in the case of a foreclosure by a judicial proceeding, otherwise to the person or persons legally entitled thereto.

11. **Miscellaneous.**

11.1 **Notices.** Any notice under this Mortgage shall be in writing. Any notice to be given or document to be delivered under this Mortgage shall be effective when either delivered in person or deposited as registered or certified mail, postage prepaid, addressed to the party at the address specified in this Mortgage. Either party may by written notice to the other designate a different address.

11.2 **Annual Reports.** If the Mortgaged Property is not a single family residence, Grantor shall within 60 days following the close of each fiscal year of Grantor, furnish to Lender a statement of net operating income received from the Mortgaged Property during Grantor's previous fiscal year in such detail as Lender shall require: "Net operating income" shall mean all cash receipts from the Mortgaged Property less all cash expenditures made in connection with the operation of the Mortgaged Property.

11.3 **Attorney Fees; Expenses.** In the event that Lender shall take any action, judicial or otherwise, to enforce the Notes, other portions of the Indebtedness, or any provision of this Mortgage, or if Lender shall be required to appear in any proceeding to protect and maintain the priority of this Mortgage, Lender shall be entitled to recover from Grantor all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records; the cost of title reports and surveyors' reports; costs of appraisals, and attorneys' fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any efforts of Lender to collect the Indebtedness or enforce this Mortgage. Grantor shall reimburse Lender for expenses so incurred on demand with interest thereon at the highest rate then being paid on any of the Indebtedness from the date of expenditure until repaid.

11.4 **Waiver, Election of Remedies.** A waiver by any party of a breach of the provision of this Mortgage shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Mortgage after failure of Grantor to perform shall not affect Lender's right to declare a default and exercise its remedies under this Mortgage.

11.5 **Successors and Assigns.** Subject to section 8, this Mortgage shall be binding on and inure to the benefit of the successors and assigns of both Grantor and Lender. If ownership of the Mortgaged Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of foreclosure or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

11.6 **Time of Essence.** Time is of the essence of this Mortgage.

- 11.7: **Lender's Right to Perform Obligations of Grantor.** If Grantor fails to perform any obligation required of it under this Mortgage, Lender without notice may take any steps necessary to remedy such failure. Grantor shall reimburse Lender for all amounts expended in so doing on demand with interest at the highest rate then being paid on any of the indebtedness from the date of expenditure until repaid. Such action by Lender shall not constitute a waiver of the default or of any other right or remedy which Lender may have on account of Grantor's default.
- 11.8: **Security Agreement; Financing Statements.** This instrument shall constitute a security agreement under the Uniform Commercial Code with respect to any Personal Property included in the Mortgaged Property and the rents, revenues, income, issues and profits therefrom (the "Collateral"). Upon request by Lender, Grantor shall promptly execute the necessary financing statements in the form required by the Uniform Commercial Code in effect in the state in which the Collateral is located and shall file the statements at Grantor's expense in all public offices where filing is required to perfect security interests of Lender in the Collateral. Lender may, at any time and at its option without further authorization from Grantor, file copies of this instrument as financing statements. Grantor will reimburse Lender for all its expenses incurred in perfecting or continuing this security interest. Upon default Grantor shall, within three days after receipt of written demand from Lender, assemble the Collateral and make it available to Lender at a place designated by Lender. To the extent any of the Property constitutes fixtures, this Mortgage shall be filed as a fixture filing in the real property records.
- 11.9: **Mobile Homes.** If the Mortgaged Property includes mobile homes, motor homes, modular homes, or similar structures, such structures shall be and shall remain personal property or real property as stated above, regardless of whether such structures are affixed to the Real Property, and irrespective of the classification of such structures for the purpose of tax assessments. The removal or addition of axles or wheels, or the placement upon or removal from a concrete base, shall not alter the characterization of such structures.
- 11.10: **Release on Full Performance.** If Grantor and/or Obligor pays the full indebtedness when due and performs all obligations under this Mortgage, Lender shall, if requested, execute and deliver to Grantor a suitable satisfaction of this Mortgage.
- 11.11: **Use.** "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES."
- 11.12: **Applicable Law.** This Mortgage has been executed and delivered to Lender and all payments are to be made to Lender. The laws of the state in which Lender is located shall be applicable for the purpose of construing and determining the validity of this Mortgage and, to the fullest extent permitted by the law of any state in which any of the Mortgaged Property is located, determining the rights and remedies of Lender on default. The law of the state where the Mortgaged Property is located shall control whether the Mortgaged Property may be sold without judicial foreclosure.
- 11.13: **Waiver of Homestead.** Grantor waives any rights under homestead or similar laws that may affect the Mortgaged Property, and Grantor agrees that the lien of this Mortgage is superior to any homestead exemption or similar right Grantor may have.
- 11.14: **Multiple Parties.** If there is more than one Grantor, the obligations imposed upon Grantor under this Mortgage shall be joint and several.

12. **Prior Indebtedness.**

12.1: **Prior Lien.** The lien securing the Indebtedness secured by this Mortgage is and remains secondary and inferior to the lien securing payment of a prior obligation in the form of a:

(Check which applies):

- ☐ Trust Deed ☐ Other (Specify) N/A
☐ Mortgage
☐ Land Sale Contract

The prior obligation has a current principal balance of approximately \$ _____, and is in the original principal amount of \$ _____. Grantor expressly covenants and agrees to pay or see to the payment of the prior indebtedness and to prevent any default thereunder.

12.2: **Default.** If the payment of any instalment of principal or any interest on the prior indebtedness is not made within the time required by the note evidencing such indebtedness, or should an event of default occur under the instrument securing such indebtedness and not be cured during any applicable grace period therein, then the Indebtedness secured by this Mortgage shall, at the option of Lender, become immediately due and payable, and this Mortgage shall be in default.

12.3: **No Modification.** Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under a prior mortgage, deed of trust, or other security agreement without the prior written consent of Lender.

13. **Notices to Grantor.**

The undersigned Grantor requests that all notices to Grantor required under this Mortgage or by law be mailed to Grantor at Grantor's address as set forth on the first page of this Mortgage.

X Steven J. Hilger, Jr.
 Grantor Steven J. Hilger, Jr.

X Mary A. Hilger
 Grantor Mary A. Hilger

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF Oregon

County of Marion

On this day personally appeared before me Steven J. Hilger, Jr. and Mary A. Hilger

to me known to be (or in California personally known to me or proved to me on the basis of satisfactory evidence to be) the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that they he signed the same as themselves with free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this 16 day of Sept, 1990.

BY Geraldine I. Adams
 Notary Public in and for the state of: Oregon

Residing at Stayton, Oregon
 My commission expires 3-17-1993

CORPORATE/PARTNERSHIP ACKNOWLEDGEMENT

STATE OF _____

County of _____

On this _____ day of _____, 19____, before me _____

personally appeared and known to me to be (or in California personally known to me or proved to me on the basis of satisfactory evidence to be) authorized agents of the corporation (or if a partnership, member(s) of the partnership) that executed the within and foregoing instrument and acknowledged the instrument to be the free and voluntary act and deed of the corporation (or partnership), by authority of its bylaws or by resolution of its board of directors (or if a partnership, by authority of the partnership agreement), for the uses and purposes therein mentioned; and an oath stated that he was/were authorized to execute and in fact executed this instrument on behalf of the corporation (or partnership).

BY _____
 Notary Public in and for the state of: _____

Residing at _____
 My commission expires _____

19606

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of The Commercial Bank the 28th day
of Sept. A.D., 19 90 at 11:37 o'clock AM., and duly recorded in Vol. M90,
of Mortgages on Page 19602.

Evelyn Biehn County Clerk

By Pauline Muelendore

FEE \$28.00