

27761

Vol. m91 Page 6014

mtc 24848
ASSIGNMENT AND MORTGAGE

DATED: April 3, 1991.

PARTIES: O. JEFFERY LeROY and DEBRA C. LeROY, husband and wife
2530 Shasta Way
Klamath Falls, Oregon 97603
Assignor-Mortgagor

SOUTH VALLEY STATE BANK
5215 South 6th Street
Klamath Falls, Oregon 97603
Assignee-Mortgagee

RECITALS:

A. The Assignor-Mortgagor is the owner of various types of interests in real property, a complete description of which is set forth on Exhibit "A" attached hereto.

B. The Assignor-Mortgagor has borrowed funds from the Assignee-Mortgagee and desires to use his/her/its interests in the above-mentioned real property as additional security for said loan.

C. Consideration for this assignment is Assignee-Mortgagee's agreement to release Lots 10, 11, and 12, Block 1, SIXTH STREET ADDITION TO THE CITY OF KLAMATH FALLS, OREGON from the interest it holds in said property under the trust deed described in SECTION 3 of this agreement at the time that the obligation attached as Exhibit "A" is paid in full.

D. In consideration of the loan of money hereinafter described, the Assignor-Mortgagor assigns and mortgages and the parties agree as follows:

AGREEMENTS

SECTION 1. ASSIGNMENT:

1.1 For value received by Assignor from Assignee, Assignor hereby grants, bargains, sells and conveys to Assignee, his/her/its successors and assigns, all of Assignors' right, title and interest in the contractual rights set forth in Exhibit "A".

1.2 The assignor warrants that the following amounts are now due to him/her/its under each of the encumbrances; or that the properties have the following reasonable values; that

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the properties have the following equities, and that the Assignor will not accept any prepayments or pay-offs upon said encumbrances without applying the excess proceeds as set forth herein:

<u>Property</u>	<u>Value</u>	<u>Subject to</u>	<u>Equity</u>
Lots 10, 11, 12	\$157,000.00	Prior South Valley State Bank Trust Deed; Approx: bal. due:	Approx: \$51,400.00
TOTALS:		\$105,600.00	

1.3 In the event of default of the obligation hereinafter mentioned, the Assignor appoints the Assignee his/her/its attorney-in-fact with full power of substitution to enforce the obligations of the above-mentioned interests in real property and to collect the amounts due thereunder and apply the same to the obligations of the Assignor herein, without prejudice to the other rights of the Assignee herein.

1.4 The Assignor shall supply the Assignee an itemization of the properties set forth in Section 1.2 above, or any substitutions thereto, complete with the current value, the gross amount of all obligations against the property and the resulting equity, not less than each 60 days from the date of this Assignment and Mortgage. The Assignor-Mortgagor hereby warrants that any such statement shall be subject to the provisions or ORS 165.080.

1.5 The Assignor agrees that at no time during the term of this Assignment and Mortgage shall the loan exceed the amount permitted in relation to the interests in real property pursuant to ORS 708.034 and ORS 708.036.

1.6 The parties agree that the proceeds of Exhibit "A" shall be applied as follows: Monthly payments of \$1,584.22, less any collection escrow charges, shall be applied first to meet Assignor's monthly obligation on the trust deed he granted to Assignee on June 26, 1989 in the approximate amount of \$1,135.00/month; any balance shall be deposited to South Valley State Bank Money Market Account 180560567 and Assignor shall use said funds to pay his property tax obligation when due on Lots 13, 14, and 15 and the W1/2 of Lot 16 in Block 1, SIXTH STREET ADDITION to the City of Klamath Falls. Any prepayments of the principal balance due on Exhibit "A" shall be applied in their entirety to the June 26, 1989 trust deed referred to above.

SECTION 2. CONVEYANCE:

For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, his/her/its successors and assigns, the real property described in Exhibit "A" attached hereto, 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".

SECTION 3. PURPOSE:

This conveyance is intended as a mortgage to secure the 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 the payment of a loan or loans in the original sum of One Hundred Seventy-Two Thousand Five Hundred and no/100 (\$172,500.00) DOLLARS, as evidenced by a promissory note held by the Mortgagee and secured by a trust deed dated July 14, 1989 and recorded in Volume M-89, Page 13422 in the Klamath County, Oregon deed records, together with interest payable on the unpaid balances thereof at the rates specified in the notes or at such other rates prescribed from time to time by Mortgagee in accordance with law and agreement with Mortgagor, and any or all renewals or 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. This Mortgage shall also include any and all future advances made by Mortgagee to Mortgagors.

SECTION 4. WARRANTY OF TITLE:

At the time of execution and delivery of this Mortgage, Mortgagor is the owner of the Mortgaged Premises in fee simple, or has an interest in the Mortgaged Premises. Mortgagor has the right and authority to mortgage the Mortgaged Premises. Mortgagor will defend Mortgagee's rights against any liens and encumbrances other than those listed in this Mortgage.

SECTION 5. RELEASE:

Assignee-Mortgagee agrees to release Lots 10, 11, and 12, Block 1, SIXTH STREET ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon from the interest it holds in said property under the trust deed described in SECTION 3 of this agreement at the time that the obligation attached as Exhibit "A" is paid in full.

SECTION 6. 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 its use.

SECTION 7. DEFAULT:

7.1 Events of Default: The occurrence of any one or more of the following events shall constitute a default hereunder:

- (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 his/her/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 or 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;
- (e) Sale or other transfer of the Mortgaged Premises, or any part thereof, without the prior written consent of Mortgagee.

7.2 Remedies on Default. If any default occurs, Mortgagee may at his/her/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. The failure of

Mortgagee to exercise any option given hereunder shall not be taken or deemed a waiver of his/her/its right to exercise his/her/its option as to any past or subsequent violation of any covenants or stipulations.

In addition to all other remedies provided herein, or by law, the Mortgagee, under the assignment provisions of this Agreement, may notify the payees under the obligations assigned to commence making payment to the Mortgagee.

SECTION 8. 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 sums as the court may adjudge reasonable as attorney fees in such suit or action, or any appeal therefrom. Mortgagor will also pay such sums 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 as 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 9. MISCELLANEOUS.

9.1 Terminology: The word "Mortgagor" and the language of this instrument shall, where there is more than one Mortgage, 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.

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

9.3 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 post paid 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.

9.4 Substitution of Collateral: Subject to the laws of the State of Oregon, the collateral in the real property and real property interest set forth in Exhibit "A" may be amended and substituted by an addendum to this Agreement, properly executed and recorded pursuant to law, from time to time, as the parties agree.

9.5 Applicable Law: This Mortgage shall be governed by the laws of the State of Oregon and any questions arising hereunder shall be construed or determined according to such laws.

9.6 Third Party Beneficiary: The Mortgagors in the attached Exhibit "A", Robert W. Creed and Kristine Creed, husband and wife, are third party beneficiaries to this Assignment and Mortgage and have standing to enforce its terms.

IN WITNESS WHEREOF the parties have set their hands and seals the day and year first hereinabove written.

O. Jeffery Leroy
O. JEFFERY LEROY
ASSIGNOR-MORTGAGOR

DEBRA C. LEROY
DEBRA C. LEROY
ASSIGNOR-MORTGAGOR

G. A. DE GROOT, V.P.
SOUTH VALLEY STATE BANK
ASSIGNEE-MORTGAGEE

State of Oregon

County of Klamath

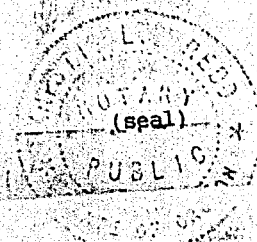
April 3, 1991

Personally appeared the above named/ O. JEFFERY LEROY and DEBRA C. LEROY, and
and acknowledged the foregoing instrument to be their voluntary act and State
deed. Bank.

WITNESS My hand and official seal.

Kristine L. Redd
Notary Public for Oregon
My Commission expires: 11/16/91

Page -6-ASSIGNMENT AND MORTGAGE



PROMISSORY NOTE

\$132,000.00

Klamath Falls, Oregon

April 3, 1991

For value received, the undersigned promises to pay to the order of O. Jeffery LeROY and DEBRA C. LeROY, husband and wife, the sum of One Hundred Thirty-two Thousand Dollars (\$132,000.00) with interest thereon at the rate of twelve percent (12%) per annum until paid, as follows:

Monthly payments of \$1,584.22 including interest, beginning April 1, 1991, and continuing on the 1st day of each month thereafter until April 1, 1996, when the remaining balance of principal and interest shall be due and payable in full.

Interest shall commence on the date hereof.

All payments shall be applied first to interest accrued to the date payment is received by the Holder of this Note and then to reduce the principal amount of this Note. If any installment is not made within thirty (30) days of the due date thereof, such installment shall bear interest at the rate described above from its due date until paid, but in no event shall any installment of principal and interest so compounded exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law.

In the case of default in the payment of any installment for a period of more than thirty (30) days after the same becomes due and payable, the whole of the principal sum then remaining unpaid, together with interest thereon that shall have accrued, shall at the election of the Holder of this Note, become immediately due and payable.

In the event any suit or action is instituted by the Holder of this Note to collect any sum secured hereby, the prevailing party shall recover, in addition to costs provided by law, reasonable attorney's fees, at both trial and on appeal, as shall be determined by the court having jurisdiction over any suit or action.

All parties to this Note, including guarantors, sureties, and endorsers, hereby severally waive presentment, protest, and notice of non-payment or any release or discharge arising from any extension of time of payment or from any other case, at or after maturity.

Maker does hereby agree to execute any assignments, security interest, deeds of trust, or other documents necessary to continue Payor's security position.

Maker shall have the privilege of paying off the full amount or any portion of this Note, including interest that shall have accrued, at any time without penalty.

/s/ Robert W. Creed
ROBERT W. CREED

/s/ Kristine Creed
KRISTINE CREED

SECOND MORTGAGE

THIS MORTGAGE, Made this 3RD day of April, 1991
by ROBERT W. CREED and KRISTINE CREED, husband and wife,
hereinafter called Mortgagor, to O. Jeffery LeROY and DEBRA C.
LeROY, husband and wife, hereinafter called Mortgagee,

WITNESSETH, That said mortgagor, in consideration of ONE
HUNDRED THIRTY-TWO THOUSAND DOLLARS (\$132,000.00), to him paid by
said mortgagee, does hereby grant, bargain, sell and convey unto
said mortgagee, his heirs, executors, administrators and assigns,
that certain real property situated in Klamath County, State of
Oregon, bounded and described as follows, to wit:

Lots 10, 11 and 12, Block 1, SIXTH STREET
ADDITION TO THE CITY OF KLAMATH FALLS,
OREGON, according to the official plat
thereof on file in the office of the
County Clerk of Klamath County, Oregon.

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, 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 certain
promissory note dated April 3, 1991, from Mortgagor in
favor of Mortgagee, in the principal amount of One Hundred
Thirty-two Thousand Dollars (\$132,000.00) with interest thereon at
the rate of twelve percent (12%) per annum payable in monthly
installments, beginning April 1, 1991, and continuing on the 1st of
each month thereafter until April 1, 1996 when the remaining
balance of principal and interest shall be due and payable in full.

The date of maturity of the debt secured by this mortgage is
the date on which the last scheduled principal payment becomes due:
April 1, 1996.

This mortgage is inferior, secondary and made subject to a
prior trust deed on the above described real estate made by O.
Jeffrey LeRoy, to South Valley State Bank, dated July 3, 1989, and
recorded in the mortgage records of the above named county in Book
No. M-89, at page 11963 thereof, reference to said mortgage records
hereby being made; the said trust deed was given to secure a note

for the principal sum of \$106,515.00 and no more; said prior trust deed and the obligations secured hereby hereinafter, for brevity, are called simply "first trust deed".

The mortgagor covenants to and with the mortgagee, his heirs, executors, administrators and assigns, that he is lawfully seized in fee simple of said premises; that the same are free from all encumbrances except said first trust deed and that he will warrant and forever defend the same against all persons; further, that he will do and perform all things required of him and pay all obligations due or to become due under the terms of said first trust deed as well as the note secured hereby, principal and interest, according to the terms thereof; but that payments made pursuant to this mortgage and the note it secures shall apply toward the first trust deed to the extent necessary to meet the terms of that obligation; and that payment of the note secured by this mortgage and said note shall constitute a full satisfaction of mortgagor's obligation with regard to the first trust deed; that while any part of the note secured hereby remains unpaid he will pay all taxes, assessments and other charges of every nature which maybe levied or assessed against said property, or this mortgage or the note secured hereby, when due and payable and before the same 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 maybe erected on the said premises continuously insured against loss or damage by fire or such other hazards as the mortgagee may from time to time require, in an amount not less than the full insurable value in a company or companies acceptable to the mortgagee herein, with loss payable, first to the holder of the said first trust deed, second, to the mortgagee named herein and then to the mortgagor as their respective interests may appear; all policies of insurance shall be delivered to the holder of the said first trust deed as soon as insured and a certificate of insurance executed by the company in which said insurance is written, showing the amount of said coverage shall be delivered to the mortgagee named in this instrument. Now if the mortgagor shall fail for any reason to procure any such insurance and to deliver said policies as aforesaid 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 in mortgagor's expense; that the mortgagor will keep the buildings and improvements on said premises in good repair and will not commit or suffer any waste of said premises. In the event any personal property is part of the security for this mortgage, then 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 satisfactory to the mortgagee, and will pay for filing the same in the proper public office or offices, as well as the cost of all liens searches made by filing officers of searching agencies as

may be deemed desirable by the mortgagee.

This mortgage is inferior, secondary and made subject to another prior trust deed in Lot 12 only made by O. Jeffrey LeRoy to South Valley State Bank dated July 14, 1989 and recorded in the mortgage records of the above named county in Book M-89 at page 13422 thereof, hereinafter referred to as "third trust deed". Mortgagee has the obligation to comply with all terms of said third trust deed and Mortgagor has no obligation with regard thereto other than as may be incidental to this second mortgage. Mortgagee's failure to comply with all terms of said third trust deed shall constitute a default of this second mortgage.

The mortgagor warrants that the proceeds of the loan represented by the above described note and this mortgage are for an organization, (even if mortgagor is a natural person) or for business or commercial purposes.

Now, therefore, if said mortgagor shall keep and perform the covenants herein contained and shall pay all obligations secured by said first trust deed as well as the note secured hereby 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 payments of the note secured hereby; 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, or fail to do or perform anything required of him by said first trust deed, the mortgagee herein, at his option, shall have the right to make such payments and to do and perform the acts required by the grantor under said first mortgage, without waiver, however, of any right arising to the mortgage 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 any suit or action being instituted to foreclose this mortgage, the losing party agrees to pay all reasonable costs incurred by the prevailing party, all statutory costs and disbursements and such further sum as the trial court may adjudge reasonable as the prevailing party's attorney's fees in such suit or action, and if an appeal is taken from any judgment or decree entered therein, the losing party further promises to pay such sum as the appellate court shall adjudge reasonable as prevailing party's attorney's fees on such appeal, all such sums to be included in the court's decree.

Each and all of the covenants and agreements herein contained
Page -3-SECOND MORTGAGE

shall apply to and bind the heirs, executors, administrators, 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 written above written by authority of its Board of Directors.

ROBERT W. CREED

KRISTINE CREED

STATE OF OREGON, County of Klamath) ss.

Personally appeared before me ROBERT W. CREED and KRISTINE CREED, and acknowledged the foregoing instrument to be their voluntary act and deed.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

After recording return to: Cameron F. Wogan,
439 Pine Street,
Klamath Falls, OR 97601

Page -4-SECOND MORTGAGE

EXHIBIT A PAGE 6

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 3rd day
of April A.D., 19 91 at 4:06 o'clock P M., and duly recorded in Vol. M91,
of Mortgages on Page 6014.
Evelyn Biehn County Clerk
By Pauline Nielsen

FEE \$63.00