

K-43313

## LEASEHOLD MORTGAGE

THIS INDENTURE, made this 8th day of August, 1991, between Klamath Cold Storage, Inc., hereinafter called "Mortgagor", and Western Bank, hereinafter called "Mortgagee";

## WITNESSETH:

For value received by Mortgagor from Mortgagee, the Mortgagor has bargained and sold and does hereby grant, bargain, sell and convey unto Mortgagee, all of its right, title and interest in and to that certain real property situate in Klamath County, Oregon, described on Exhibit "A" which is attached hereto and made a part hereof, together with the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any wise appertaining; also all fixtures and personal property now or hereafter situate on the premises and used or intended for use for plumbing, lighting, heating, cooling, ventilation, floor coverings attached to floors, and shelving, counters, and other trade fixtures; also the rents, issues and profits arising from, or in connection with, the said real and personal property or any part thereof.

TO HAVE AND TO HOLD the same unto Mortgagee, its successors and assigns, forever.

And Mortgagor does hereby covenant to and with Mortgagee that it is lawfully in possession of said real property under a lease dated August 28, 1987 by and between Klamath Cold Storage, Inc. as Lessee and Modoc Lumber Co., as Lessor. The lease of August 28, 1987 is hereafter referred to as "Ground Lease".

Mortgagor warrants and represents that no default in the performance of the terms of the Ground Lease has been made or will be made or suffered while this mortgage continues in effect, that Modoc Lumber Co. is lawfully seized in fee simple of the said real property, that Mortgagor is the record owner of the title to the improvements located on said property, that the said real property is free from encumbrances of every kind and nature.

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained, to be by the Mortgagor kept and performed, and to secure the payment of the sum of \$1,200,000 and interest thereon in accordance with the tenor of a certain promissory note executed by Klamath Cold Storage, Inc. dated August 8, 1991, payable to the order of the Mortgagee in installments not less than \$5,000 each, plus interest, on the 8th day of each month commencing March 8, 1992, until

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August 8, 2001, when the balance then remaining unpaid shall be paid.

Mortgagor does hereby covenant and agree to and with Mortgagee, its successors and assigns:

1. That it will pay, when due, the indebtedness hereby secured, with interest, as prescribed by the Note, and all taxes, liens and utility charges upon said premises or for services furnished thereto, and the rentals and all other sums required by the Ground Lease.
2. That it will not enter into additional secondary financing or additional lease obligations without prior written consent of the Mortgagee.
3. That it will perform or cause to be performed each and every term, covenant and condition of the Ground Lease to be kept and performed.
4. That it will not commit or permit strip or waste of the said premises or any part thereof; that it will keep the real and personal property hereinabove described in good order and repair and in tenantable condition; that it will promptly comply with any and all municipal and governmental rules and regulations with reference thereto; that if any of the said property be damaged or destroyed by any cause, it will immediately reconstruct or repair the same so that, when completed, it shall be worth not less than the value thereof at the time of such loss or damage; provided, that if such loss or damage shall be caused by a hazard against which insurance is carried, the obligation of Mortgagor to repair or reconstruct shall not arise unless the Mortgagee shall consent to the application of insurance proceeds to the expense of such reconstruction or repair.
5. That it will, at its own cost and expense, keep the building or buildings now or hereafter upon said premises insured against loss by fire (with extended coverage endorsement), in one or more insurance companies satisfactory to Mortgagee in an aggregate amount not less than the amount of the indebtedness hereby secured (unless the full insurable value of such building or buildings is less than the amount hereby secured, in which event the Mortgagor shall insure to the amount of the full insurable value); that all policies of insurance upon said premises, including policies in

excess of the amount hereinabove mentioned and policies against other hazards than those required, shall contain such provisions as Mortgagee shall require, and shall provide, in such form as Mortgagee may prescribe, that loss shall be payable to Mortgagee; that all such policies and receipts showing full payment of premiums therefor shall be delivered to and retained by Mortgagee during the existence of this mortgage; that at least ten (10) days prior to the expiration of any policy or policies it will deliver to Mortgagee satisfactory renewals thereof together with premium receipts in full; that Mortgagee may, at its option, require the proceeds of any insurance policies upon the said premises to be applied to the payment of the indebtedness hereby secured or to be used for the repair or reconstruction of the property damaged or destroyed.

6. That it will execute or procure such further assurance of its interest in or title to the said property as may be requested by Mortgagee.
7. That it will not surrender its leasehold estate and interest hereinabove described, nor terminate or cancel the Ground Lease and will not, without the express written consent of Mortgagee, modify, change, supplement, alter or amend the Ground Lease either orally or in writing.
8. That in case Mortgagor shall fail, neglect or refuse to do or perform any of the acts or things herein required to be done or performed, Mortgagee may, at its option, but without any obligation on its part so to do, and without waiver of such default, procure any insurance, pay any rentals and other sums required under said Ground Lease, taxes or liens or utility charges, make any repairs, or do any other of the things required, and any expenses so incurred and any sums so paid shall bear interest at the rate specified in the Note and shall be secured hereby.
9. That, if any default be made in the payment of the principal or interest of the indebtedness hereby secured or in the performance of any of the covenants or agreements of this mortgage, the Mortgagee may, at its option, without notice, declare the entire sum secured by this mortgage due and payable and foreclose this mortgage.

10. That, in the event of the institution of any suit or action to foreclose this mortgage, Mortgagor will pay such sum as the court may adjudge reasonable as attorney's fees in connection therewith and such further sums as Mortgagee shall have paid or incurred for title reports or examination fees in connection therewith, and all such sums are secured hereby; that in any such suit, the court may, upon application of the plaintiff and without regard to the condition of the property or the adequacy of the security for this indebtedness hereby secured and without notice to Mortgagor or anyone else, appoint a receiver to take possession and care of all said mortgaged property and collect and receive any or all of the rents, issues and profits which had theretofore arisen or accrued or which may arise or accrue during the pendency of such suit; that any amount so received shall be applied towards the payment of the debt secured hereby, after first paying therefrom the charges and expenses of such receivership, but until a breach or default by Mortgagor in one or more of its covenants or agreements herein contained, it may remain in possession of the mortgaged property and retain all rents actually paid to and received by it prior to such default.
11. All of the covenants of Mortgagor shall be binding upon its heirs, successors and assigns and inure to the benefit of the successors and assigns of Mortgagee; provided, however, that none of the personal covenants of Mortgagor are personally binding upon its heirs, successors, or assigns for more than ten (10) years after the date of the first payment of principal on the Promissory Note of this Leasehold Mortgage. In the event of any transfer of the property herein described or any part thereof or any interest therein, whether voluntary or involuntary or by operation of law, Mortgagee may, without notice of Mortgagor or anyone else, extend the time of payment, execute releases or partial releases from the lien of this mortgage or in any other respect modify the terms hereof without thereby affecting the personal primary liability of Mortgagor for the payment of the indebtedness hereby secured. No condition of this mortgage shall be deemed waived unless the same be expressly waived in writing by Mortgagee. Whenever any notice, demand, or request is required by the terms hereof or by any law now in existence

or hereafter enacted, such 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. Notwithstanding any provision to the contrary above, whenever in this Leasehold Mortgage, Mortgagee or Mortgagor is given the opportunity to exercise remedies to avail of rights provided, reasonable notice of the intent to exercise such remedies shall be given by one party to the other.

IN WITNESS WHEREOF, Mortgagor, has caused these presents to be executed the day and year first hereinabove written.

Truman Passmore, Pres.

CORPORATE ACKNOWLEDGEMENT

STATE OF OREGON

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) ss.

COUNTY OF KLAMATH

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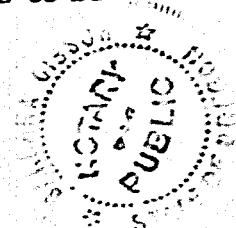
On this 23<sup>rd</sup> day of August, 1991, before me, the undersigned Notary Public, personally appeared Truman Passmore, President/Secretary of Klamath Cold Storage, Inc., and known to me to be an authorized agent of the corporation that executed the Leasehold Mortgage and acknowledged the Mortgage to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Mortgage and in fact executed the Mortgage on behalf of the corporation.

By Barbara Nielsen

Residing at Klamath Falls, Oregon

Notary Public in and for the State of Oregon

My Commission expires 7-9-93



## PARCEL 3: LEASEHOLD INTEREST

Building and improvements located on a parcel of land situated in Klamath Falls, Klamath County, Oregon; said premises being included in, and made a part of, that certain Unrecorded Memorandum of Ground Lease dated August 28, 1987, between Modoc Lumber Co., and Klamath Cold Storage, Inc., described as follows:

A tract of land situated in Government Lot 7, Section 33, T 38 S, R 9 EWM, Klamath County, Oregon, more particularly described as follows: Commencing at the West  $\frac{1}{4}$  Corner of said Section 33; thence N  $0^{\circ}01'$  W, along the west line thereof, 69.3 feet; thence S  $55^{\circ}27'$  E 188.55 feet; thence S  $10^{\circ}27'$  W 25.27 feet to the True Point of Beginning, on the southerly line of South Sixth Street; thence S  $10^{\circ}46'30''$  W 427.39 feet to the true point of beginning of that tract of land described in Volume 80 page 562 of the Klamath County Deed Records; thence following along the westerly line of said tract S  $10^{\circ}46'30''$  W 256.81 feet (259.69 feet by said Volume 80 page 562), and along the arc of a curve to the left (radius = 573.14 feet, central angle =  $5^{\circ}00'57''$  and long chord bears S  $08^{\circ}16'02''$  W 50.16 feet) 50.17 feet; thence S  $79^{\circ}24'$  E, parallel to and 10 feet southwesterly from the southerly wall of a building, 130.50 feet; thence N  $10^{\circ}36'00''$  E, parallel to and 28 feet southeasterly from the easterly face of a loading dock along said building, 387.00 feet; thence S  $79^{\circ}24'00''$  E 22.00 feet; thence N  $10^{\circ}36'00''$  E parallel to and 50 feet southeasterly from said loading dock, 295.00 feet, to a point on the southerly line of South Sixth Street; thence along the southerly line of South Sixth Street the following courses N  $55^{\circ}46'30''$  W 97.80 feet, N  $61^{\circ}41'40.5''$  W 32.28 feet and N  $73^{\circ}32'01.5''$  W 32.28 feet to the True Point of Beginning, containing 100,980 square feet or 2.318 acres.

STATE OF OREGON,  
County of Klamath ss.

Filed for record at request of:

RETURN

WESTERN BANK  
P.O. Box 669  
Klamath Falls, OR 97601

Klamath County Title co.  
on this 3rd day of Oct. A.D. 19 91  
at 2:34 o'clock P.M. and duly recorded  
in Vol. M91 of Mortgages Page 20161  
Evelyn Biehn County Clerk  
By Darlene Mulendese  
Deputy.

Fee, \$33.00