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K-45765

Vol. 93 Page 28989

MORTGAGE

DATE: November 1, 1993.

PARTIES: JWK Limited Partnership  
4360 Highway 39  
Klamath Falls, Oregon 97603

Return:

Kerns Brothers Real Estate,  
a Co-Partnership consisting  
of James William Kerns, John  
Paul Kerns and Robert B. Kerns  
6100 Sunset Ridge Road  
Klamath Falls, Oregon 97601

("Mortgagor")

("Mortgagee")

## AGREEMENTS:

## SECTION 1. CONVEYANCE

For value received 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:

Lot 3 in Block 1 and the vacated portion of Farmers Way adjoining said Lot 3 on the East and that portion of Lot 2 in Block 1, all in Kerns Tracts, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, said Lot 2 being more particularly described as follows: Beginning at the Southwest corner of Lot 2; thence North along the Westerly line of Lot 2 a distance of 60 feet to a point; thence Easterly and parallel to the Southerly line of said Lot 2 a distance of 267.34 feet to a point; thence South parallel to the Westerly line of said Lot 2 a distance of 60 feet to the Southerly line of said Lot 2; thence Westerly along said Southerly line to the point of beginning.

Lots 6, 7, 8, 9, 10, and 11 in Block 2 and Lots 6, 7, 8, 9, 10, and 11 in Block 3, all in Kerns Tracts, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

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.

## SECTION 2. PURPOSE

This conveyance is intended as a mortgage to secure 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 payment of a loan or loans in the principal amount of Two Hundred Fifty Thousand and No/100ths (\$250,000.00) DOLLARS, evidenced by a promissory note of even date, together with interest payable on the unpaid balance thereof at the rate specified in the Note. 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 liens and encumbrances. Mortgagor will defend Mortgagee's right 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 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 their use.

## SECTION 5. CHARGES AGAINST MORTGAGED PREMISES

5.1 Taxes and Utilities. Mortgagor will pay when due all taxes, assessments, water and other charges for utility services that may be levied, assessed or charged upon or against the Mortgaged Premises, or any part thereof. Upon request, Mortgagor shall deliver to Mortgagee evidence of payment of the taxes, assessments or other charges.

5.2 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 a 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 a foreclosure or sale under the lien.

5.3 Insurance and Other Charges. Mortgagor will pay when due all premiums upon insurance policies on the mortgaged property, all licenses or fees legally owing by it and all rental or other charges for the use of any leased ground or premises upon which any of the Mortgaged Premises may be located.

5.4 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 premium therefor; and pay licenses, fees, rentals, charges, taxes and/or assessments due or claimed to be

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due under any legislative power of 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 seven (7) per cent from the date of payment.

5.5 Reserve for Insurance and Taxes. In the event Mortgagor fails to pay when due any taxes or insurance premiums, Mortgagor agrees to pay Mortgagee, in addition to the past due taxes or insurance premiums, with and in addition to the monthly payments of principal and interest on any indebtedness, one-twelfth (1/12th) of the annual taxes and insurance premiums as reasonably estimated by Mortgagee. The reserve payments shall be held by Mortgagee in a separate account, to pay the taxes and insurance premiums when they become due and payable, and Mortgagee shall not be obliged to pay Mortgagor interest or other earnings which may be derived from Mortgagee's use of the funds in the reserve account. If at any time, mortgagee determines that the funds in the reserve account will not be sufficient to pay taxes or insurance premiums when due, Mortgagor agrees to pay Mortgagee, on demand, an additional monthly payment equal to a pro rata portion of the deficiency corresponding to the number of months from the date of Mortgagee's determination of the deficiency to the date upon which the charges become due and payable. Mortgagor hereby authorizes Mortgagee to pay the taxes and insurance premiums in the amount shown by the statements thereof furnished by the collector of the taxes or insurance carriers or their representatives.

#### SECTION 6. CONDITION 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 finance 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. Mortgagor 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 interests 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 indebtedness secured as Mortgagee may elect. Mortgagor hereby appoints Mortgagee agent to collect all amounts payable under the policies to Mortgagor, and amounts retained by Mortgagee, after the cost of collection, shall be applied to payment of the principal sum and interest thereon, and other sums secured by this Mortgage.

#### 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 a 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 event 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 a 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 or 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.

#### SECTION 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

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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 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 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.

#### SECTION 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 expenses and attorney fees and any balance on account of the last maturing portion of the indebtedness secured hereby.

#### SECTION 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. Mortgagor shall have the right to transfer the Mortgaged Premises at any time, with or without Mortgagee's consent.

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.

12.7 Disclaimer. This Mortgage has been prepared by William P. Brandsness of Brandsness & Brandsness, P.C. on behalf of the Mortgagor. The Mortgagee is advised to seek its own legal and financial advice and the Mortgagees hereby acknowledge that they are not depending upon said attorneys for legal or financial advice.

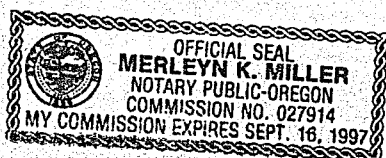
The parties have executed this Agreement as of the date first written above.

JWK Limited Partnership  
J. W. Kerns, Inc.,  
General Partner

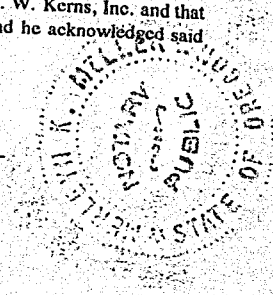
*James W. Kerns*  
its President

STATE OF OREGON )  
 ) ss. November 1, 1993.  
County of Klamath )

Personally appeared James W. Kerns who, being duly sworn, stated that he is President of J. W. Kerns, Inc. and that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and he acknowledged said instrument to be its voluntary act and deed.  
Before me:



*Merleyn K. Miller*  
Notary Public for Oregon  
My Commission expires: 9-16-97



STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title co the 3rd day  
of Nov. A.D., 19 93 at 10:45 o'clock A.M. and duly recorded in Vol. M93  
of Mortgages on Page 28989

FEE \$20.00

Evelyn Biehn County Clerk  
By *Pauline Mullenbarger*