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05-01-94A11:32 RCVD

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INTC 32549  
MORTGAGE

DATE: August 10, 1994

PARTIES: William E. Castle and Susan K. Castle, husband and wife  
6402 Palomino Court  
Klamath Falls, OR 97603 MORTGAGORWilliam H. Oster and Cynthia A. Oster, husband and wife  
2051 Elkhorn  
Eugene, OR 97401 MORTGAGEE

## AGREEMENTS:

## SECTION 1. CONVEYANCE

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

A portion of Lot 30, Block 2, Tract No. 1099, ROLLING HILLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, being more particularly described as follows:

Beginning at the Southwest corner of said Lot 30, Block 2; thence North 00 degrees 23' 04" East along the West line of said Lot 30 a distance of 8.00 feet; thence South 84 degrees 07' 34" East a distance of 84.01 feet to a point on the South line of said Lot 30; thence North 89 degrees 36' 56" West, along the South line of said Lot 30 a distance of 83.63 feet to the point of beginning.

Lot 29, Block 2, Tract 1099, ROLLING HILLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

EXCEPT A portion of Lot 29, Block 2, Tract No. 1099 ROLLING HILLS, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Northeast corner of said Lot 29, Block 2; thence Southwesterly along the Easterly line of said Lot 29, along the Arc of a 54.81 degree curve to the right a distance of 8.00 feet; thence North 84 degrees 07' 34" West a distance of 81.52 feet to a point on the North line of said Lot 29; thence South 89 degrees 36' 56" East along the North line of said Lot 29 a distance of 82.76 feet to the point of beginning.

1. MORTGAGE  
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UPCN RECORDING, PLEASE RETURN TO: Collection #33549  
MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY  
222 S. Sixth Street Klamath Falls, OR 97601

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 Thirteen Thousand Three Hundred Thirty-three and 33/100 Dollars (\$13,333.33), evidenced by the following described promissory note from Mortgagor to Mortgagee:

Date of Note  
August 10, 1994

Amount  
\$13,333.33

Maturity Date  
April 15, 1996

together with interest payable on the unpaid balances thereof at the rate specified in the Note or at such other rate prescribed from time to time by Mortgagee in accordance with law and agreement with Mortgagor, any and all renewals, modifications, substitutions and extensions thereof. All covenants and provisions of this Mortgage shall bind the successors and assigns of Mortgagor and shall inure to the benefit of the successors and assigns of Mortgagee.

#### SECTION 3. WARRANTY OF TITLE

At the time of execution and delivery of this Mortgage, Mortgagor is the owner of the mortgaged premises in fee simple, Mortgagor has the right and authority to mortgage the mortgaged premises as provided in this Mortgage, and the mortgaged premises are free and clear of liens and encumbrances, except:

1. Restrictions and easements as contained in plat dedication, to wit:
  - (1) Building setback line of 75 feet from the centerline of the street on which the Lot fronts and 50 feet from the centerline of the street on which the lot sides. (2) Public utilities easements 16 feet in width centered on all side and back Lot lines. (3) One foot reserve strips (street plugs) as shown on the annexed plat to be dedicated to Klamath County and released by resolution of the County Commissioners when the adjoining property is properly developed. (4) All sanitary facilities subject to the approval of the Oregon Department of Environmental Quality. (5) Access to Reeder Road, a county road, is hereby vacated for Lot 5, Block 1 and Lot 7, Block 2 (6) Access to the proposed road adjacent to the North boundary of said "ROLLING HILLS" is hereby vacated for Lots 1, 9,

10, 11, 12, 14 and 15 Block 1 and all of Block 3. (7)  
Drainage easements as shown on the annexed plat.

2. Covenants, conditions and restrictions, but omitting restrictions, if any, based on race, color, religion or national origin, imposed by instrument, subject to the terms and provisions thereof, recorded October 16, 1974 in volume M75, page 13496, Microfilm Records of Klamath County, Oregon and amended by instrument recorded October 1, 1975 in Volume M75, page 11919, Microfilm Records of Klamath County, Oregon.

3. Articles of Association, imposed by instrument, subject to the terms and provisions thereof, recorded October 15, 1974 in Volume M75, page 13469, Microfilm Records of Klamath County, Oregon.

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 Incumbrances. 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.

#### SECTION 6. CONDITION OF MORTGAGED PREMISES

6.1 First-Class Condition. Mortgagor will maintain the mortgaged premises in first-class condition.

6.2 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.

#### SECTION 7. 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 8. DEFAULT

8.1 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) 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.

8.2 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 9. ATTORNEY FEES AND OTHER COSTS

In the event suit or action is begun to foreclose this Mortgage, Mortgagor will pay, in addition to the costs and disbursements allowed by law, such sum as the Court may adjudge reasonable attorney fees in such suit or action or upon any

appeal or petition for review. Mortgagor will also pay such sum as the court may adjudge reasonable for the necessary examination and search of the public records respecting the title to the mortgaged premises. The Plaintiff in such suit or action may take 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 10. 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 11. MISCELLANEOUS

11.1 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.

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

11.3 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.

11.4 Transfer. Mortgagor shall have the right to transfer the mortgaged premises at any time, with or without Mortgagee's consent.

11.5 Time of Essence. Time is of the essence of this Mortgage.

11.6 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.

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11.7 Disclaimer. This Mortgage has been prepared by Andrew C. Brandsness of Brandsness, Brandsness & Rudd, P.C. on behalf of the Mortgagor. The Mortgagees are advised to seek their own legal and financial advice and 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.

William E. Castle  
William E. Castle

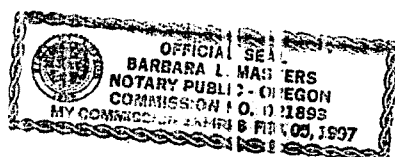
Susan K. Castle  
Susan K. Castle

STATE OF OREGON

County of Klamath ) ss.

August 9<sup>th</sup>, 1994

Personally appeared William E. Castle and Susan K. Castle, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:



Barbara L. Masters  
Notary Public for Oregon  
My Commission expires: 3-3-97

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_  
of \_\_\_\_\_ Sept. \_\_\_\_\_ A.D. 19 94 at 11:32 \_\_\_\_\_ o'clock \_\_\_\_\_ A.M., and duly recorded in Vol. \_\_\_\_\_ 6th day  
of \_\_\_\_\_ Mortgage \_\_\_\_\_ on Page 27759 M94  
Evelyn Biehn \_\_\_\_\_ County Clerk  
By Barbara L. Masters

FEE \$35.00

6.

MORTGAGE  
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