

K-47300 Vol M14 Page 1
 MORTGAGE, SECURITY AGREEMENT, AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT, AND FIXTURE FILING (this "Mortgage") is made as of the 15th day of November, 1994, by and between Daryl J. Kollman and Marta C. Kollman, Husband and Wife, having their office at 1300 Main Street, Klamath Falls, Oregon 97601 ("Mortgagor"), and Truman Passmore, Truman D. Passmore, II and Douglas J. Passmore, known as the Passmore Consulting Group, having their office at 661 Spring Street, Klamath Falls, Oregon 97601 ("Mortgagee").

WHEREAS, Mortgagor and Mortgagee have entered into a Consulting Agreement wherein Mortgagor has agreed to pay Mortgagee \$100,000.00 for their consulting services (the "Obligation");

NOW, THEREFORE, for the purpose of securing the Obligation Mortgagor irrevocably mortgages to Mortgagee, all of Mortgagor's right, title, and interest in and to the real property located in Klamath County, state of Oregon, (the "Property") and more particularly described as follows:

An irregular parcel of Burlington Northern Railroad Company's station ground property situated in Government Lot 7 (SW $\frac{1}{4}$) of Section 33, T. 38 S. R. 9 E.W.M. in the City of Klamath Falls, above said County and State more particularly described as follows: Commencing at the West $\frac{1}{4}$ corner of said Section 33; thence N. 00°01' W. along the West line thereof, 69.3 feet; thence S. 55°27' E. 188.55 feet; thence S. 10°27' W. 25.27 feet to the True Point of Beginning, on the Southerly line of South Sixth Street; thence S. 10°46'30" W. 427.39 feet to the True Point of Beginning of that tract of land described in Volume 80 on page 562 of the Klamath County Deed Records; thence following along the Westerly line of said tract the following courses, S. 10°46'30" W. 256.81 feet (259.69 feet by said Volume 80 Page 562), along the arc of a curve to the left 618.95 feet (radius=573.14 feet, central angle = 61°52'30" and the long chord bears S. 20°09'45" E. 589.31 feet) to a point lying 14.5 feet Northeasterly, as measured at right angles, from the centerline of the 100-foot wide railroad right-of-way corridor occupied jointly by Grantor herein and Southern Pacific Railroad Company and S. 51°06' E. along a line drawn parallel with and distant 14.5 feet Northeasterly from said centerline, 182.02 feet; thence N. 38°54' E. 16.21 feet; thence Northwesterly along the arc of a curve to the right (radius = 484.18 feet, central angle = 26°37'30" and long chord bears N. 37°47'15" W. 222.98 feet) 225.00 feet to the Southernmost corner of that certain parcel conveyed to the former Great Northern Railway Company by deed and recorded in Volume 82 on page 172 of the Klamath County Deed Records; thence continuing Northwesterly along the Easterly boundary of the above said parcel the following courses, along a curve to the right (radius = 484.18 feet, central angle = 12°38'00" and the long chord bears N. 18°09'30" W. 106.54 feet) 106.76 feet, Northerly on a curve to the right (radius = 702.55 feet, central angle = 22°37'00" and the long chord bears N. 00°32'00" W. 275.52 feet) 277.32 feet, N. 10°46'30" E. 70.23 feet, along a curve to the right (radius = 706.05 feet, central angle = 1°27'00" and the long chord bears N. 17°12'30" E. 17.87 feet) 17.87 feet and N. 10°46'30" E. 589.64 feet to the Southerly line of South Sixth Street; thence along the Southerly line of South Sixth Street the following courses, N. 55°46'30" W. 149.88 feet, N. 61°41'40.5" W. 32.28 feet and N. 73°32'01.5" W. 32.28 feet to the True Point of Beginning. EXCLUDING, herefrom, that portion of the above described parcel lying Southwesterly of a line drawn parallel with and distant 30.5 feet Northeasterly as measured at right angles from the centerline of said 100-foot wide railroad right-of-way corridor.

TOGETHER WITH all interests, estates, and rights that Mortgagor now has or may acquire in (1) the Property; (2) any and all options, agreements, and contracts for the purchase or sale of all or any part or parts of the Property or interests in the Property; (3) all easements, rights-of-way, and rights used in connection with the Property or as a means of access to the Property; and (4) all tenements, hereditaments, and appurtenances in any manner belonging, relating, or appertaining to the Property; and

When recorded return to:
 Page 1 - Mortgage KLAMATH COUNTY TITLE COMPANY
 422 MAIN STREET
 KLAMATH FALLS, OR 97601

All of the above is sometimes referred to below as the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property, provided always, that if the Obligation shall be paid, performed, and satisfied in full, then the lien granted by this Mortgage shall be released.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

Particular Covenants and Warranties of Mortgagor

1.01 Performance of Covenants. Mortgagor shall duly and punctually pay the Obligation.

1.02 Property. Mortgagor warrants that it holds good and merchantable title to the Property and the Improvements, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in Exhibit A, and the superior Trust Deed of Klamath Cold Storage, Inc. in the principal sum of \$550,000.00 Mortgagor covenants that it shall forever defend Mortgagee's rights under this Mortgage and the priority of this Mortgage against the adverse claims and demands of all persons.

1.03 Maintenance and Improvements. Mortgagor shall maintain every portion of the Property and Improvements in good repair, working order, and condition, except for reasonable wear and tear, and shall at Mortgagee's election restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty or affected by any Condemnation. Mortgagor shall not commit, permit, or suffer any waste, strip, or deterioration of the Mortgaged Property.

1.04 Liens. Mortgagor shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Mortgaged Property. Mortgagor shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Mortgaged Property prior to, on a parity with, or subordinate to the lien of this Mortgage, except as specifically provided in Exhibit A.

1.05 Impositions. Mortgagor shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges of every nature now or hereafter assessed or levied against any part of the Mortgaged Property (including, without limitation, levies or charges resulting from Covenants), or on the lien or estate of Mortgagee (collectively, the "Impositions"); provided, however, that if by law any such Imposition may be paid in installments, whether or not interest shall accrue on the unpaid balance, Mortgagor may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.

1.06 Insurance. Mortgagor shall obtain and maintain in full force and effect during the term of this Mortgage an all risk property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverages, all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance.

1.07 Casualty/Loss Restoration

(1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Mortgage, Mortgagor shall give prompt written notice of the casualty to Mortgagee, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Mortgaged Property. Mortgagee may make proof of loss if it is not made promptly and to Mortgagee's satisfaction by Mortgagor.

(2) Subject to rights of any superior mortgagee or trust deed beneficiary, Mortgagor assigns to Mortgagee all insurance proceeds that

Mortgagor may be entitled to receive with respect to any casualty as provided in this paragraph. All insurance proceeds shall be held in a joint account under the control of the Mortgagor and Mortgagee. Mortgagor may elect either to restore or not to restore the damaged Improvements. If Mortgagor shall repair or replace the damaged Improvements, the parties shall pay or reimburse Mortgagor from the insurance proceeds for the reasonable cost or repair or restoration as the funds are expended. If Mortgagor notifies Mortgagee in writing that, pursuant to its rights under this Mortgage, it elects not to repair or replace the damaged Improvements, the parties shall apply the proceeds not to be so used, toward payment of all or part of the indebtedness secured by this Mortgage. Any insurance proceeds that have not been paid out within one year after their receipt for the repair, replacement, or restoration of the Mortgaged Property shall forthwith be applied by Mortgagee toward payment of all or part of the indebtedness secured by this Mortgage in such order as Mortgagee may determine.

ARTICLE II Condemnation

2.01 Condemnation

(1) Should any part of or interest in the Mortgaged Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Mortgagor receive any notice or other information regarding such action, Mortgagor shall give immediate notice of such action to Mortgagee.

(2) Subject to the rights of any superior mortgagee or trust deed beneficiary, Mortgagee shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligation, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Mortgagor's name and make any compromise or settlement in connection with such Condemnation. In the event the Mortgaged Property is taken in its entirety by condemnation, all Obligations secured by this Mortgage, at Mortgagee's election, shall become immediately due and collectible.

(3) Mortgagee may, at its sole option, apply the Condemnation Proceeds to the reduction of the Obligations in such order as Mortgagee may determine, or apply all or any portion of the Condemnation Proceeds to the cost of restoring and improving the remaining Mortgaged Property. In the event that Mortgagee elects to apply the Condemnation Proceeds to restoration and improvement, the proceeds shall be held by Mortgagee and shall be released only upon such terms and conditions as Mortgagee shall require in its sole discretion, including but not limited to prior approval of plans and release of liens. No Condemnation Proceeds shall be released if Mortgagor is in default under this Mortgage.

ARTICLE III Security Agreement and Fixture Filing

To secure the Obligations, Mortgagor grants to Mortgagee a security interest in the following: (1) the Mortgaged Property to the extent the same is not encumbered by this Mortgage as a first priority real estate lien; and (2) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Mortgage shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code-Secured Transactions statutes of the State of Oregon. The mailing address of Mortgagor and the address of Mortgagee from which information may be obtained are set forth in the introductory paragraph of this Mortgage.

ARTICLE IV Events of Default; Remedies

4.01 Events of Default. Each of the following shall constitute an event of default under this Mortgage:

(1) **Nonpayment.** Failure of Mortgagor to pay any of the Obligations within 10 days after written notice from Mortgagee of any such nonpayment; provided, however, no notice from Mortgagee shall be required for nonpayment

if during the preceding 12 calendar months Mortgagee (or Mortgagee's agent) has sent notice to Mortgagor concerning any nonpayment under this mortgage.

(2) **Other Indebtedness.** Mortgagor's default beyond the applicable grace periods in the payment of the indebtedness owed by Mortgagor to Klamath Cold Storage, Inc., an Oregon corporation, or the performance of any obligation upon the trust deed wherein Klamath Cold Storage, Inc., or its assigns, is the Beneficiary.

(3) **Bankruptcy.** The occurrence of any of the following with respect to Mortgagor, any guarantor of the Obligations, or the then-owner of the Mortgaged Property: (a) appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Mortgaged Property.

4.02 Remedies in Case of Default. If an Event of Default shall occur, Mortgagee may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

(1) **Acceleration.** Mortgagee may declare all or any portion of the Obligations immediately due and payable.

(2) **Receiver.** Mortgagee may have a receiver appointed for the Mortgaged Property. Mortgagee 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 secured by this Mortgage. Employment by Mortgagee shall not disqualify a person from serving as receiver. Mortgagor consents to the appointment of a receiver at Mortgagee's option and waives any and all defenses to such an appointment.

(3) **Possession.** Mortgagee may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Mortgaged Property and use, operate, manage, and control it as Mortgagee shall deem appropriate in its sole discretion. Upon request after an Event of Default, Mortgagor shall peacefully relinquish possession and control of the Mortgaged Property to Mortgagee or any receiver appointed under this Mortgage.

(4) **Rents.** Mortgagee may revoke Mortgagor's right to collect the Rents, and may, either itself or through a receiver, collect the same. Mortgagee shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (4). If Rents are collected by Mortgagee under this subsection (4), Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Mortgagor and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Mortgagor and this power shall terminate.

(5) **Foreclosure.** Mortgagee may judicially foreclose this Mortgage and obtain a judgment foreclosing Mortgagor's interest in all or any part of the Property and giving Mortgagee the right to collect any deficiency remaining due after disposition of the Mortgaged Property.

(6) **Fixtures.** With respect to any Improvements subject to a security interest in favor of Mortgagee, Mortgagee may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

(7) **Abandonment.** Mortgagee may abandon all or any portion of the Mortgaged Property by written notice to Mortgagor.

4.03 Cumulative Remedies. All remedies under this Mortgage are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy.

4.04 Deficiency. No sale or other disposition of all or any part of the

Mortgaged Property pursuant to this Section 5 shall be deemed to relieve Mortgagor of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations.

**ARTICLE V
General Provisions**

5.01 Time is of the Essence. Time is of the essence with respect to all covenants and obligations of Mortgagor under this Mortgage.

5.02 Mortgage Binding on Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of the successors and assigns of Mortgagor and Mortgagee. If the Trust Estate or any portion thereof shall at any time be vested in any person other than Mortgagor, Mortgagee shall have the right to deal with such successor regarding this Mortgage, the Mortgaged Property, and the Obligations in such manner as Mortgagee deems appropriate in its sole discretion, without notice to or approval by Mortgagor and without impairing Mortgagor's liability for the Obligations.

5.03 Indemnity. Mortgagor shall hold Mortgagee and its directors, officers, employees, agents, and attorneys, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Mortgagee's interest under this Mortgage, except Mortgagor shall not be liable for acts performed by Mortgagee in violation of applicable law.

5.04 Expenses and Attorney Fees. If Mortgagee refers any of the Obligations to an attorney for collection or seeks legal advice following a default; if Mortgagee is the prevailing party in any litigation instituted in connection with any of the Obligations; or if Mortgagee or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Mortgaged Property (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, or in connection with any state or federal tax lien), and an attorney is employed by Mortgagee to (1) appear in any such action, suit, or proceeding, or (2) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce Mortgagee's interests, then in any such event Mortgagor shall pay reasonable attorney fees, costs, and expenses incurred by Mortgagee or its attorney in connection with the above-mentioned events or any appeals related to such events, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Such amounts shall be secured by this Mortgage and, if not paid upon demand, shall bear interest at the rate specified in the Note.

5.05 Applicable Law. The Mortgage and the validity, interpretation, performance, and enforcement of the Mortgage shall be governed by the laws of the state of Oregon.

5.06 Rights of Prior Trust Deed. The Mortgaged Property is subject to a superior trust deed wherein Klamath Cold Storage, Inc., is the Beneficiary, consequently the rights of Mortgagee with respect to insurance and condemnation proceeds, and all other rights granted under this Mortgage that have also been granted to such a superior trust deed beneficiary, and shall be subject to the rights of the superior trust deed beneficiary. Mortgagor hereby authorizes such superior beneficiaries, on satisfaction of the indebtedness secured by their trust deed to remit all remaining insurance or Condemnation proceeds and all other sums held by them to the parties to be applied in accordance with this Mortgage.

5.07 Commercial Property. Mortgagor covenants and warrants that the Property and Improvements are used by Mortgagor exclusively for business and commercial purposes. Mortgagor also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Mortgagor, Mortgagor's spouse, or Mortgagor's minor or dependent child.

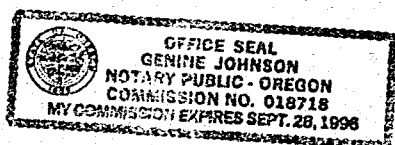
MORTGAGOR

Daryl J. Kollman
Daryl J. Kollman

Marta C. Kollman
Marta C. Kollman

STATE OF OREGON)
) ss.
County of Klamath.)

On this 16th day of November, 1994, before me personally appeared Daryl J. Kollman and Marta C. Kollman, who being duly sworn, stated that they acknowledged the foregoing instrument to be their voluntary act and deed.



Genine Johnson
Notary Public for Oregon
My commission expires: 9/28/96

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Company the 16th day
of November A.D., 19 94 at 3:09 o'clock P. M., and duly recorded in Vol. M94
of Mortgages on Page 35327

FEE \$35.00

Evelyn Biehn
By Shirley Chilly County Clerk