

**MORTGAGE, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Mortgage") is made as of the 6 day of March, 1995, by and between JERRY WATKINS and SUZANNE WATKINS, aka Susan Watkins, 2502 Reed Lane, Medford, Oregon, 97501 ("Mortgagor"), and LEN R. MERRYMAN, 4690 Pioneer Rd., Medford, OR 97501 ("Mortgagee").

WHEREAS, Mortgagee has offered to make a loan to Mortgagor in the sum of Fourteen Thousand and No/100 Dollars (\$14,000.00), which loan is to be evidenced by a Promissory Note of even date herewith. (The Promissory Note as modified, supplemented, extended, renewed, or replaced from time to time is referred to below as the "Note"); and

WHEREAS, as a condition to the making of the loan to Mortgagor, Mortgagee has required, and Mortgagor has agreed to execute and deliver, this Mortgage.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, 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, and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property");

TOGETHER WITH all interests, estates, and rights that Mortgagor now has or may acquire in (1) the Property; (2) any and all options, permits, agreements, and contracts for the purchase, lease, use 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

TOGETHER WITH all rights, titles, and interests of Mortgagor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures, machinery, equipment, and other personal property located on the Property or attached to, contained in, or used in any such buildings and other improvements, and all appurtenances and additions to and substitutions and replacements of the Property (all of the foregoing being collectively referred to below as the "Improvements"); and

TOGETHER WITH any and all use, permit or development rights and other similar rights or interests that benefit or are appurtenant to the Property or the Improvements or both, and any of their proceeds; and

TOGETHER WITH all present and future rights in and to all present and future licenses, permits, approvals, and agreements with or from any municipal corporation, county, state, federal or other governmental or quasi-governmental entity or agency relating to the development, improvement, division, or use of all or any portion of the Property or Improvements; and

TOGETHER WITH Mortgagor's rights in construction materials, supplies, and equipment delivered to the Property or intended to be used in connection with the construction or use of any Improvements; and

TOGETHER WITH all rights, interests, and claims that Mortgagor now has or may acquire with respect to any damage to or taking of all or any part of the Property or the Improvements, including without limitation any and all proceeds of insurance in effect with respect to the Improvements, any and all awards made for taking by eminent domain or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property or the Improvements, and any and all awards resulting from any other damage to the Property or the Improvements, all of which are assigned to Mortgagee, and, subject to the terms of this Mortgage, Mortgagee is authorized to collect and receive such proceeds, to give proper receipts and acquittances for the proceeds, and to apply them to the Obligations secured by this Mortgage.

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

Mortgagee and Mortgagor acknowledge that fee title to the Property is vested in the United States of America, Forest Service. Mortgagor's present interest in the Property is a leasehold interest pursuant to a Term Special Use Permit issued by the United States Department of Agriculture, Forest Service ("Special Use Permit"). A copy of the permit cover sheet, marked Exhibit "B", attached hereto and incorporated herein.

TO HAVE AND TO HOLD the Mortgaged Property, provided always, that if all the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien granted by this Mortgage shall be released.

This Mortgage, the Note, and all other agreements or instruments executed at any time in connection therewith, as they may be amended or supplemented from time to time, are sometimes

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collectively referred to below as the "Loan Documents."

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

#### ARTICLE I

##### Particular Covenants and Warranties of Mortgagor

1.01 Obligations Secured. This Mortgage secures the following, collectively referred to as the "Obligations":

(1) The payment of all indebtedness, including but not limited to, principal and interest, and the performance of all covenants and obligations of Mortgagor, under the Note, whether such payment and performance is now due or becomes due in the future;

(2) The payment and performance of all covenants and obligations in this Mortgage, in the other Loan Documents, and in all other security agreements, notes, agreements, and undertakings now existing or hereafter executed by Mortgagor with or for the benefit of Mortgagee; and

(3) The payment and performance of any and all other indebtedness and obligations of Mortgagor to Mortgagee of any nature whatsoever, whether direct or indirect, primary or secondary, joint or several, liquidated or unliquidated, whenever and however arising, and whether or not reflected in a written agreement or instrument.

1.02 Payment of Indebtedness; Performance of Covenants. Mortgagor shall duly and punctually pay and perform all of the Obligations.

1.03 Property. Mortgagor warrants that it holds good title to the leasehold interest which constitutes 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". 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.

1.04 Further Assurances; Filing; Refiling; Etc.

(1) Mortgagor shall pay all filing and recording fees, and all expenses incident to the execution, filing, recording, and acknowledgment of this Mortgage; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the execution, delivery, filing, and recording of this Mortgage.

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**1.05 Compliance with Laws and Covenants.** Mortgagor further represents, warrants, and covenants that:

(1) The Property, if developed, has been developed, and all Improvements, if any, have been constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Property, including but not limited to, all terms, covenants and conditions of the Special Use Permit (collectively "Covenants"); and

(2) Mortgagor and its operations upon the Property currently comply, and will hereafter comply in all material respects with all applicable Laws and Covenants.

**1.06 Definitions; Environmental Covenants; Warranties and Compliance**

(1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §§9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §§6901-6992.

(2) For the purposes of this section, "Hazardous Substance" includes without limitation all substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations.

(3) Mortgagor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Mortgagor's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and record keeping.

(4) Mortgagor will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.

(5) Mortgagor shall hold Mortgagee, its agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of

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Mortgagor's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.

(6) Mortgagor represents and warrants to Mortgagee that:

(a) Neither the Property nor Mortgagor is in violation of or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.

(b) Mortgagor has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.

(c) To the best of Mortgagor's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.

(7) All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the release or satisfaction of this Mortgage, or the foreclosure of this Mortgage by any means.

**1.07 Maintenance and Improvements.** Mortgagor shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without Mortgagee's prior written consent; provided, however, that Mortgagor may remove, demolish, or materially alter such Improvements as become obsolete, if the removal or material alteration does not materially detract from the operation of the Mortgagor's business and if all Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. 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 (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01 below). Mortgagor shall not commit, permit, or suffer any waste, strip, or deterioration of the Mortgaged Property.

**1.08 Liens.** Mortgagor shall pay when due all claims for

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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.

#### 1.09 Impositions

(1) 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.

(2) Mortgagor shall furnish to Mortgagee, promptly upon request, satisfactory evidence of the payment of all Impositions. Mortgagee is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions.

**1.10 Inspection of the Property.** Mortgagor shall permit Mortgagee and its authorized representatives to enter and inspect the Property and the Improvements at such reasonable times as Mortgagee may choose.

**1.11 Limitations of Use.** Mortgagor shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of Mortgagee.

#### 1.12 Insurance

(1) **Property and Other Insurance.** Mortgagor shall obtain and maintain in full force and effect during the term of this Mortgage: (a) all risk property insurance together with endorsements for replacement cost, inflation adjustment and malicious mischief, all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance; and (b) comprehensive general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to Mortgagee, and in no

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event less than \$300,000 combined single limit coverage.

(2) **Insurance Companies and Policies.** All insurance shall be written by a company or companies reasonably acceptable to Mortgagee with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of Mortgagee with loss proceeds under any policy payable to Mortgagee, subject to the terms of this Mortgage; shall require 30 days' prior written notice to Mortgagee of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Mortgagor or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against Mortgagee; shall be in full force and effect on the date of this Mortgage; and shall be accompanied by proof of premiums paid for the current policy year. Mortgagee shall be named as additional insured on all liability policies. Mortgagor shall forward to Mortgagee certificates evidencing the coverages required under this Mortgage and, upon request, copies of all policies.

(3) **Insurance Proceeds.** All proceeds from any insurance on the Mortgaged Property shall be used in accordance with the provisions of Section 1.14.

**1.13 Assignments of Policies upon Foreclosure.** In the event of foreclosure of the lien of this Mortgage or other transfer of title, or assignment of the Mortgaged Property in whole or in part, all right, title, and interest of Mortgagor in and to all policies of insurance procured under Section 1.12 shall inure to the benefit of and pass to the successors in interest of Mortgagor or the purchaser or grantee of all or any part of the Mortgaged Property, to the extent allowed by such policies.

**1.14 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) Mortgagor assigns to Mortgagee all insurance proceeds that Mortgagor may be entitled to receive with respect to any casualty. Mortgagee may, at its sole option, apply the insurance proceeds to the reduction of the Obligations in such order as Mortgagee may determine, whether or not such obligations are then due, or apply all or any portion of the insurance proceeds to the

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cost of restoring and rebuilding the portion of the Mortgaged Property that was damaged or destroyed. In the event that Mortgagee elects to apply the insurance proceeds to rebuilding and restoration, Mortgagee shall be entitled to hold the proceeds, and the proceeds shall be released only on 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 proceeds shall be released if Mortgagor is in default under this Mortgage.

#### 1.15 Actions to Protect Mortgaged Property; Reserves

(1) If Mortgagor shall fail to obtain the insurance required by Section 1.12, make the payments required by Section 1.09 (other than payments that Mortgagor is contesting in accordance with Section 1.09(2)), or perform or observe any of its other covenants or agreements under this Mortgage, Mortgagee may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Mortgage or its priority, or to protect or enforce any of Mortgagee's rights, or to recover any indebtedness secured by this Mortgage, shall be a lien on the Mortgaged Property, shall be secured by this Mortgage, and shall be paid by Mortgagor upon demand, together with interest at the rate provided in the Note. No payment or other action by Mortgagee under this section shall impair any other right or remedy available to Mortgagee or constitute a waiver of any default.

(2) If Mortgagor fails to promptly perform any of its obligations under Section 1.09 or 1.12 of this Mortgage, Mortgagee may require Mortgagor thereafter to pay and maintain with Mortgagee reserves for payment of such obligations. In that event, Mortgagor shall pay to Mortgagee each month a sum estimated by Mortgagee to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Mortgagor shall pay any deficiency to Mortgagee upon demand. The reserves may be commingled with Mortgagee's other funds, and Mortgagee shall not be required to pay interest to Mortgagor on such reserves. Mortgagee shall not hold the reserve in trust for Mortgagor, and Mortgagee shall not be the agent of Mortgagor for payment of the taxes and assessments required to be paid by Mortgagor.

1.16 Estoppel Certificates. Mortgagor, within five days of Mortgagee's request, shall furnish Mortgagee a written statement, duly acknowledged, of the amount of the Obligations secured by this Mortgage and whether any offsets or defenses exist against such Obligations. If Mortgagor shall fail to furnish such a

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statement within the time allowed, Mortgagee shall be authorized, as Mortgagor's attorney-in-fact, to execute and deliver such statement.

## 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) Mortgagee shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, 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 Assignment of Leases, Rents, Issues, and Profits

3.01 Assignment. Mortgagor assigns and transfers to Mortgagee (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Mortgaged Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Mortgaged Property and the lease, rental, or license of all or

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any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). This assignment is intended by Mortgagor and Mortgagee to create a present and unconditional assignment to Mortgagee, subject only to the license set forth in Section 3.02 below.

**3.02 License.** Mortgagee hereby grants to Mortgagor a revocable license to collect and receive the Rents. Such license may be revoked by Mortgagee, without notice to Mortgagor, upon the occurrence of any event of default under this Mortgage.

**3.03 Termination.** The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Mortgagor to Mortgagee shall cease and terminate.

**3.06 Attorney-in-Fact.** Mortgagor irrevocably constitutes and appoints Mortgagee, and each of its officers, as its true and lawfully attorney-in-fact, with power of substitution, to undertake and execute any and all of the rights, powers, and authorities described in this Article III with the same force and effect as if undertaken or performed by Mortgagor, and Mortgagor ratifies and confirms any and all such actions that may be taken or omitted to be taken by Mortgagee, its employees, agents, and attorneys.

#### ARTICLE IV 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; (2) all personal property that has been used or will be used by integrating it into the construction of any Improvements on the Mortgaged Property; (3) all fixtures that are now or will hereafter be placed on or in the Mortgaged Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Mortgaged Property; (5) all property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Mortgaged Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Mortgaged Property; and (7) 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

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Uniform Commercial Code 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 V

#### Events of Default; Remedies

5.01 Events of Default. Each of the following shall constitute an event of default under this Mortgage and under each of the other Loan Documents:

(1) **Nonpayment.** Failure of Mortgagor to pay any of the Obligations before the due date.

(2) **Breach of Other Covenants.** Failure of Mortgagor to perform or abide by any other covenant included in the Obligations, including without limitation those covenants of the Special Use Permit and those covenants in the Note, in this Mortgage, or in any other Loan Document.

(3) **Misinformation.** Falsity when made in any material respect of any representation, warranty, or information furnished by Mortgagor or its agents to Mortgagee in or in connection with any of the Obligations.

(4) **Other Default.** The occurrence of any other event of default under the Note or any of the other Obligations.

(5) **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.

(6) **Transfer; Due-on-Sale; Due-on-Encumbrance.** Any sale, gift, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Mortgaged Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without Mortgagee's prior written consent, shall constitute an event of default. The provisions of this subsection (7) shall apply to each and every Transfer, regardless of whether or not Mortgagee has consented or waived its rights in connection with any previous Transfer. Mortgagee may attach such

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conditions to its consent under this subsection (7) as Mortgagee may determine in its sole discretion, including without limitation an increase in the interest rate or the payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by Mortgagee.

(7) **Certain Taxes.** For purposes of this subsection (8), State Tax shall mean:

(a) A specific tax on mortgages, secured indebtedness, or any part of the Obligations secured by this Mortgage.

(b) A specific tax on the mortgagor of property subject to a mortgage that the taxpayer is authorized or required to deduct from payments on the mortgage.

(c) A tax on property chargeable against Mortgagee under a mortgage or holder of the note secured by the mortgage.

(d) A specific tax (other than an income tax or a gross receipts tax) on all or any portion of the Obligations or on payments of principal and interest made by Mortgagor.

If any State Tax is enacted after the date of this Mortgage applicable to this Mortgage, enactment of the State Tax shall constitute an event of default, unless the following conditions are met:

(a) Mortgagor may lawfully pay the tax or charge imposed by the State Tax without causing any resulting economic disadvantage or increase of tax to Mortgagee, and

(b) Mortgagor pays or agrees in writing to pay the tax or charge within 30 days after notice from Mortgagee that the State Tax has been enacted.

**5.02 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. No bond shall be required of the receiver.

(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 and Personal Property.** With respect to any Improvements and other personal property 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.

**5.03 Sale.** In any sale under this Mortgage or pursuant to any judgment, the Mortgaged Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as Mortgagee may elect, without regard to the right of Mortgagor, any person claiming under Mortgagor, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Mortgaged Property or the part thereof so sold, free and clear of the estate of Mortgagor, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Mortgagee, its officers, agents, and employees, may purchase at

any such sale. Mortgagee and each of its officers are irrevocably appointed Mortgagor's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Mortgaged Property or any portions thereof so sold and, for that purpose, Mortgagee and its officers may execute all appropriate instruments of transfer. Nevertheless, Mortgagor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for such purpose.

**5.04 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. An election by Mortgagee to cure under Section 1.15 shall not constitute a waiver of the default or of any of the remedies provided in this Mortgage. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

**5.05 Receiver.** Upon taking possession of all or any part of the Mortgaged Property, Mortgagee or a receiver may:

(1) **Management.** Use, operate, manage, control, and conduct business with the Mortgaged Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.

(2) **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Mortgaged Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.

(3) **Construction.** At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.

(4) **Additional Indebtedness.** If the revenues produced by the Mortgaged Property are insufficient to pay expenses, Mortgagee or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Mortgage.

**5.06 Application of Proceeds.** All proceeds realized from the exercise of the rights and remedies under this Section 5 shall be applied as follows:

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(1) **Costs and Expenses.** To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Mortgaged Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6.07 below.

(2) **Indebtedness.** To pay all Obligations, in such order as Mortgagee shall determine in its sole discretion.

(3) **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

**5.07 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. If the proceeds of a sale, a collection, or other realization of or upon the Mortgaged Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, Mortgagor shall remain liable for any deficiency to the fullest extent permitted by law.

**5.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws.** To the fullest extent permitted by law, Mortgagor waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Mortgage and any existing or future law providing for the valuation or appraisal of the Mortgaged Property prior to any sale.

## ARTICLE VI General Provisions

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

**6.02 Notice.** Except as otherwise provided in this Mortgage, all notices pertaining to this Mortgage shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Mortgage. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when

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actually received.

**6.03 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 Mortgaged Property 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.

**6.04 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.

**6.05 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.

**6.06 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.

**6.07 Captions.** The captions to the sections and paragraphs of this Mortgage are included only for the convenience of the parties and shall not have the effect of defining, diminishing,



or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Mortgage.

**6.08 Severability.** If any provision of this Mortgage shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Mortgage, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Mortgage.

**6.09 Entire Agreement.** This Mortgage contains the entire agreement of the parties with respect to the Mortgaged Property. No prior agreement, statement, or promise made by any party to this Mortgage that is not contained herein shall be binding or valid.

*Jerry Watkins*  
Jerry Watkins

*Suzanne L. Watkins*  
Suzanne Watkins

"Mortgagor"

*Len R. Merryman*  
Len R. Merryman

"Mortgagee"

STATE OF OREGON )  
COUNTY OF JACKSON ) ss.

March 6, 1995

Personally appeared the above named JERRY WATKINS and SUZANNE WATKINS, husband and wife, and acknowledged the foregoing instrument to be their voluntary act.

Before me:



*Robyn Grimes Tuttle*  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

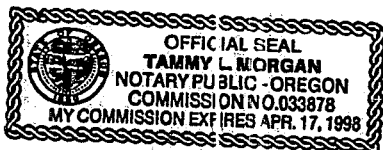
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STATE OF OREGON )  
COUNTY OF JACKSON ) ss.

March 6, 1995

Personally appeared the above named LEN R. MERRYMAN and acknowledged the foregoing instrument to be his voluntary act.

Before me:



Tammy L. Morgan  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

AFTER RECORDING: RETURN TO:  
JACKSON COUNTY TITLE  
1150 CRATER LAKE AVE STE C  
MEDFORD, OR 97504

## EXHIBIT "A"

A leasehold interest in Lot Eight (8) of Block V, LAKE OF THE WOODS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co the 9th day  
of March A.D., 1995 at 3:15 o'clock P M., and duly recorded in Vol. M95  
of Mortgages on Page 5336.

By Bernetha G. Letsch County Clerk

FEE \$100.00