

WHEN RECORDED, RETURN TO:

First Interstate Bank of Oregon, N.A.
Klamath Falls Commercial Banking Center
P. O. Box 608
Klamath Falls, Oregon 97601

Attention: John Rayl

THIRD MODIFICATION AGREEMENT

THIS THIRD MODIFICATION AGREEMENT (the "Modification") is made this 27th day of October, 1995 among MARGIE F. FITZGERALD ("Original Borrower"), MARGERY (MARGIE) FRANCES FITZGERALD AS TRUSTEE OF THE MARGIE FITZGERALD 1995 REVOCABLE TRUST (the "Trust") and FIRST INTERSTATE BANK OF OREGON, N.A. ("Bank").

RECITALS:

A. Bank loaned the Original Borrower the principal sum of Thirty-Five Thousand and No/100 Dollars (\$35,000.00) (the "Loan ") evidenced by that certain promissory note dated June 11, 1979 in the original principal sum of \$35,000.00, with interest thereon and with a stated maturity date of July 1, 1989, made by the Original Borrower in favor of Bank (with any amendments, modifications, extensions or renewals, "Note 1").

B. The Loan is secured by, among other collateral, the collateral described in that certain indenture dated June 11, 1979 granted by the Original Borrower as Mortgagor in favor of Bank as the mortgagee (with any amendments, the "Mortgage"). The Mortgage was recorded June 12, 1979 at Volume M79, Pages 13808-13811, Doc. No. 68869, of the Klamath County, Oregon, real estate records. The Mortgage encumbers, among other collateral, the real property described as follows (the "Real Property"):

Lots 4 and 5 of Block 53 of City of Malin, Klamath County, Oregon, according to the official records thereof on file in Klamath County, Oregon.

Lots 6 and 7 of Block 53 of City of Malin, Klamath County, Oregon, according to the official records thereof on file in Klamath County, Oregon.

C. The Loan is further secured by, among other collateral, the collateral

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described in that certain assignment of leases, rents and agreements dated August __, 1979 executed by the Original Borrower in favor of Bank (with any amendments, the "Assignment"). The Assignment encumbers, among other collateral, the Real Property.

D. Bank loaned the Original Borrower additional monies in the principal amount of \$20,622.54 evidenced by that certain promissory note dated December 1, 1986 in the principal amount of \$35,000.00, with interest thereon and with a stated maturity date of December 10, 1991, made by the Original Borrower in favor of Bank (with any amendments, modifications, extensions or renewals, "Note 2"). Note 2 evidenced \$20,622.54 of new indebtedness and \$14,377.46 of old indebtedness. Note 2 superseded and replaced Note 1.

E. Pursuant to the terms of that certain modification of mortgage and assignment dated December 1, 1986 executed by the Original Borrower and Bank (the "First Modification"), the Mortgage and Assignment were amended to secure Note 2 and to extend the maturity date of the Loan. The First Modification was recorded December 3, 1986 at Vol. M86, Page 22297, Doc. No. 68896, of the Klamath County, Oregon, real estate records.

F. Bank loaned the Original Borrower additional monies in the principal amount of \$7,525.57 evidenced by that certain promissory note dated September 28, 1990 in the principal amount of \$35,000.00, with interest thereon and with a stated maturity date of September 10, 1995, made by the Original Borrower in favor of Bank (with any amendments, modifications, extensions or renewals, "Note 3"). Note 3 evidenced \$7,525.57 of new indebtedness and \$27,474.43 of old indebtedness. Note 3 superseded and replaced Note 2.

G. Pursuant to the terms of that certain modification of mortgage and assignment dated September 28, 1990 executed by the Original Borrower and Bank (the "Second Modification"), the Mortgage and Assignment were amended to secure Note 3 and to extend the maturity date of the Loan. The Second Modification was recorded September 28, 1990 at Vol. M90, Pages 19649-19652, Doc. No. 20794, of the Klamath County, Oregon, real estate records.

H. There is now due and owing on the Loan the principal amount of \$22,733.09.

I. The Original Borrower has transferred assets to the Trust.

J. The Original Borrower has requested certain changes in some of the terms and provisions of the Loan and an extension of the maturity date of the Loan. One of the conditions, among others, of Bank's renewal of the Loan is that the Trust be an additional obligor of the Loan pursuant to the terms and conditions of the Loan Documents (as defined below).

K. The Loan was renewed pursuant to the terms of that certain promissory note dated as of the same date hereof in the principal amount of \$22,733.09, with interest thereon and with a stated maturity date of October 10, 2000, made by the Original Borrower and the Trust in favor of Bank (with any amendments, modifications, extensions or renewals, "Note 4"). Note 4

supersedes and replaces Note 3.

NOW, THEREFORE, in consideration of the foregoing recitals, which are expressly incorporated in and made a part of this Modification, and of the mutual covenants, conditions and promises specified in this Modification, and for other good and valuable consideration, Bank, Borrower and the Trust agree as follows:

1. Recitals. The Recitals are true and correct.
2. Definitions. Note 1, Note 2, Note 3 and Note 4 shall sometimes hereinafter be referred to collectively as the "Note." "Original Borrower" and the "Trust" shall sometimes hereinafter be referred to collectively as the "Borrower"). The term "Loan Documents" shall mean all documents executed in connection with or contemplated by the Loan, together with all amendments to such documents. The term "Loan Documents" includes, without limitation, the Note, Mortgage, Assignment, First Modification, Second Modification and this Modification. Capitalized terms which are defined in the foregoing recitals or other provisions of this Modification shall have the meaning given those terms in such recitals or other provisions. Capitalized terms which are not defined in this Modification and are defined in the Note, Mortgage or Assignment shall have the meaning given those terms in the Note, Mortgage and Assignment.
3. Amendment of Mortgage and Assignment. The Mortgage and the Assignment are hereby amended as follows:
 - (a) All references in the Mortgage, Assignment or other Loan Documents to the "Loan" or "Indebtedness" shall be deemed to include, without limitation, the indebtedness evidenced by Note 4; and
 - (b) The final maturity date of the Loan as evidenced by Note 4 is extended to October 10, 2000.
4. Additional Obligor. The Trust is and shall hereby be an additional obligor of the Loan pursuant to the terms and conditions of the Loan Documents.
5. Rights and Remedies on Default. Upon any default by Borrower under the terms of this Modification, the Note, the Mortgage, Assignment or other Loan Documents, Bank shall have all rights and remedies available to it under the Note, Mortgage, Assignment other Loan Documents, and at law or in equity, and all rights and remedies shall be cumulative and not alternative. The rights and remedies, include, without limitation, declaring the entire outstanding balance of the Loan due and payable.
6. Environmental Laws and Disabilities Laws. In this Modification, "Environmental Laws" means any and all state, federal and local statutes, regulations, and ordinances relating to the protection of human health or the environment. "Hazardous Substances" is used in its very broadest sense and refers to materials that, because of their quantity, concentration or

physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Substances" shall include, without limitation, petroleum products or crude oil or any fraction thereof and any and all hazardous or toxic substances, materials or waste as defined by or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any other of the Environmental Laws. Borrower shall cause the Property (as defined in the Trust Deed) and all operations on the Property to comply with all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws. The term "Disabilities Laws" means all applicable federal, state and local laws and regulations related to usability of and accessibility to the Property by people with disabilities. "Disabilities Laws" includes, but is not limited to, the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990 and all regulations adopted thereunder. Borrower shall exercise extreme care in handling Hazardous Substances and shall undertake any and all preventive, investigatory or remedial action (including without limitation emergency response, removal, containment and other remedial action) (a) required by any applicable Environmental Laws or Disabilities Laws or orders by any governmental authority having jurisdiction under Environmental Laws or Disabilities Laws, or (b) necessary to prevent or minimize property damage (including, without limitation, damage to Borrower's own property), personal injury or damage to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or operations on the Property. In the event Borrower fails to perform any of its obligations under this Section, Bank may perform (but shall not be required to perform) such obligations at Borrower's expense pursuant to provisions of the other Loan Documents. In performing any such obligations of Borrower, Bank shall at all times be deemed to be the agent of Borrower and shall not by reason of such performance be deemed to be assuming any responsibility of Borrower under any Environmental Law or to any third party.

(a) At any time Bank requests, Borrower shall provide to Bank further assurance of Borrower's compliance with this Section. The assurances shall be in form and substance satisfactory to Bank in Bank's sole discretion, and may include, but not be limited to, Borrower providing to Bank an environmental audit from a source acceptable to Bank at Borrower's expense.

(b) Borrower agrees to indemnify and hold harmless Bank and its officers, directors, employees and agents, and Bank's successors and assigns and their officers, directors, employees and agents against any and all claims, demands, losses, liabilities, costs and expenses (including, without limitation, attorney fees at trial and on any appeal or petition for review) incurred by such person (i) arising out of or relating to any investigatory or remedial action involving the Property and the operations conducted on the Property and required by Environmental Laws or Disabilities Laws or by orders of any governmental authority having jurisdiction under any Environmental Laws or Disabilities Laws, or (ii) on account of injury to any person whatsoever or damage to any property arising out of, in connection with or in any way relating to (A) the violation of any applicable laws or regulations, including, but not limited to, Disabilities Laws or Environmental Laws, (B) the use, treatment, storage, generation, manufacture,

transport, release, spill, disposal or other handling of Hazardous Substances on the Property or in connection with operations, or (iii) the contamination of any of the Property by Hazardous Substances by any means whatsoever, and (iii) without in any way limiting the foregoing for any other reason, or on account of, or in connection with the Property or this Modification.

(c) The covenants contained in this Section shall survive the repayment of the Indebtedness and the delivery of a deed in lieu of foreclosure to Bank or any successor of Bank and shall survive any foreclosure, whether judicial or nonjudicial, of the Property by Bank or any successor of Bank, and shall be for the benefit of Bank, and any successor to Bank, as holder of any security interest in the Property or the Indebtedness, or as owner of the Property or any other property of Borrower following foreclosure or the delivery of a deed in lieu of foreclosure.]

7. Effect of Agreement and Priority of Mortgage and Assignment Not Affected. This Modification is an amendment of the Mortgage, Assignment and other Loan Documents and is not and shall not be construed as a novation of any of the Loan Documents. The priority of the Mortgage and the Assignment shall not be affected by this Modification or by renegotiation or adjustment of the interest rate in the Note upward or downward, which may increase or decrease the amount of periodic payments and may extend the term of the Loan. The priority of the Mortgage and the Assignment also shall not be affected by the execution of new notes or agreements for modification and extension of the Loan which reflect changes made pursuant to any of the adjustments. Unless otherwise provided by law, the priority of the Mortgage and the Assignment shall not be affected by any change in terms whether or not it adversely affects subordinate or prior interest holders.

8. Additional Fees. Borrower shall pay Bank on the date of this Modification the sum of \$350.00 as a modification and extension fee. This fee is in addition to any and all other fees and expenses described in the Note or any other Loan Documents.

9. Appraisals. Bank may also require appraisals acceptable to Bank, ordered by Bank from appraisers acceptable to Bank at Borrower expense, in order to comply with applicable state or federal laws or regulations or when Bank reasonably deems it necessary to protect Bank's interest in the Real Property.

10. All Other Terms Unmodified. Except as specifically modified by this Modification, the Note, Mortgage, Assignment and all other Loan Documents shall be and remain in full force and effect in accordance with their respective terms and conditions.

11. Arbitration.

(a) Binding Arbitration. Upon the demand of any party ("Party/Parties"), to a Document (as defined below), whether made before the institution of any judicial proceeding or not more than 60 days after service of a complaint, third party complaint, cross-claim or counterclaim or any answer thereto or any amendment to any of the above, any Dispute (as defined below) shall be resolved by binding arbitration in accordance with the terms of

this Arbitration Program. A "Dispute" shall include any action, dispute, claim or controversy of any kind, whether founded in contract, tort, statutory or common law, equity, or otherwise, now existing or hereafter arising between any of the Parties arising out of, pertaining to or in connection with any agreement, document or instrument to which this Arbitration Program is attached or in which it appears or is referenced or any related agreements, documents, or instruments ("Documents"). Any Party who fails to submit to binding arbitration following a lawful demand by another Party shall bear all costs and expenses, including reasonable attorneys' fees, (including those incurred in any trial, bankruptcy proceeding or on appeal) incurred by the other Party in obtaining a stay of any pending judicial proceeding and compelling arbitration of any Dispute. The parties agree that any agreement, document or instrument which includes, attaches to or incorporates this Arbitration Program represents a transaction involving commerce as that term is used in the Federal Arbitration Act, ("FAA") Title 9 United States Code. **THE PARTIES UNDERSTAND THAT BY THIS AGREEMENT THEY HAVE DECIDED THAT THEIR DISPUTES SHALL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT, AND ONCE DECIDED BY ARBITRATION NO DISPUTE CAN LATER BE BROUGHT, FILED OR PURSUED IN COURT.**

(b) Governing Rules. Arbitrations conducted pursuant to this Arbitration Program shall be administered by the American Arbitration Association ("AAA"), or other mutually agreeable administrator ("Administrator") in accordance with the terms of this Arbitration Program and the Commercial Arbitration Rules of the AAA. Proceedings hereunder shall be governed by the provisions of the FAA. The arbitrator(s) shall resolve all Disputes in accordance with the applicable substantive law designated in the Documents. Judgment upon any award rendered hereunder may be entered in any court having jurisdiction; provided, however that nothing herein shall be construed to be a waiver by any party that is a bank of the protections afforded pursuant to 12 U.S.C. 91 or any similar applicable state law.

(c) Preservation of Remedies. No provision of, nor the exercise of any rights under, this arbitration clause shall limit the right of any Party to: (1) foreclose against any real or personal property collateral or other security, or obtain a personal or deficiency award; (2) exercise self-help remedies (including repossession and setoff rights); or (3) obtain provisional or ancillary remedies such as injunctive relief, sequestration, attachment, replevin, garnishment, or the appointment of a receiver from a court having jurisdiction. Such rights can be exercised at any time except to the extent such action is contrary to a final award or decision in any arbitration proceeding. The institution and maintenance of an action as described above shall not constitute a waiver of the right of any Party to submit the Dispute to arbitration, nor render inapplicable the compulsory arbitration provisions hereof. Any claim or Dispute related to exercise of any self-help, auxiliary or other rights under this paragraph shall be a Dispute hereunder.

(d) Arbitrator Powers and Qualifications; Awards. The Parties agree to select a neutral "qualified" arbitrator or a panel of three "qualified" arbitrators to resolve any Dispute hereunder. "Qualified" means a practicing attorney, with not less than 10 years practice in commercial law, licensed to practice in the state of the applicable substantive law designated in the Documents. A Dispute in which the claims or amounts in controversy do not exceed

\$1,000,000.00, shall be decided by a single arbitrator. A single arbitrator shall have authority to render an award up to but not to exceed \$1,000,000.00 including all damages of any kind whatsoever, costs, fees, attorneys' fees and expenses. Submission to a single arbitrator shall be a waiver of all Parties' claims to recover more than \$1,000,000.00. A Dispute involving claims or amounts in controversy exceeding \$1,000,000.00 shall be decided by a majority vote of a panel of three qualified arbitrators. The arbitrator(s) shall be empowered to, at the written request of any Party in any Dispute, (1) to consolidate in a single proceeding any multiple party claims that are substantially identical or based upon the same underlying transaction; (2) to consolidate any claims and Disputes between other Parties which arise out of or relate to the subject matter hereof, including all claims by or against borrowers, guarantors, sureties and or owners of collateral; and (3) to administer multiple arbitration claims as class actions in accordance with Rule 23 of the Federal Rules of Civil Procedure. In any consolidated proceeding the first arbitrator(s) selected in any proceeding shall conduct the consolidated proceeding unless disqualified due to conflict of interest. The arbitrator(s) shall be empowered to resolve any dispute regarding the terms of this arbitration clause, including questions about the arbitrability of any Dispute, but shall have no power to change or alter the terms of this Arbitration Program. The prevailing Party in any Dispute shall be entitled to recover its reasonable attorneys' fees in any arbitration, and the arbitrator(s) shall have the power to award such fees. The award of the arbitrator(s) shall be in writing and shall set forth the factual and legal basis for the award.

(e) **Miscellaneous.** All statutes of limitation applicable to any Dispute shall apply to any proceeding in accordance with this arbitration clause. The Parties agree, to the maximum extent practicable, to take any action necessary to conclude an arbitration hereunder within 180 days of the filing of a Dispute with the Administrator. The arbitrator(s) shall be empowered to impose sanctions for any Party's failure to proceed within the times established herein. Arbitrations shall be conducted in the state of the applicable substantive law designated in the Documents. The provisions of this Arbitration Program shall survive any termination, amendment, or expiration hereof or of the Documents unless the Parties otherwise expressly agree in writing. Each Party agrees to keep all Disputes and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the Parties or as required by applicable law or regulation. If any provision of this Arbitration Program is declared invalid by any court, the remaining provisions shall not be affected thereby and shall remain fully enforceable.

12. **Notice UNDER OREGON LAW. MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY THE BANK AFTER OCTOBER 3, 1989 CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE BANK TO BE ENFORCEABLE. BORROWER ACKNOWLEDGES RECEIPT OF A COPY OF THIS MODIFICATION.**

IN WITNESS WHEREOF, Borrower and Bank have signed this Modification or have caused this Modification to be signed by their duly authorized officers as of the date first written above.

Margie F. Fitzgerald
MARGIE F. FITZGERALD

FIRST INTERSTATE BANK OF OREGON, N.A.

MARGERY (MARGIE) FRANCES
FITZGERALD AS TRUSTEE OF
THE MARGERY (MARGIE)
FRANCES FITZGERALD 1995
REVOCABLE TRUST

By Fred Kanul
Title Vice President

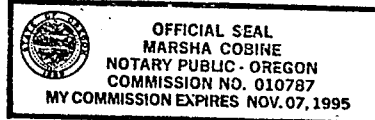
Margery Margie Frances Fitzgerald
Margery (Margie) Frances
Fitzgerald, Trustee

STATE OF OREGON)
 : ss.
County of Klamath)

The foregoing instrument was acknowledged before me this 27th day of October, 1995 by Margery (Margie) Frances Fitzgerald, Trustee of the Margery (Margie) Frances Fitzgerald 1995 Revocable Trust, on behalf of the Trust.

Marsha Cobine
Notary Public for Oregon

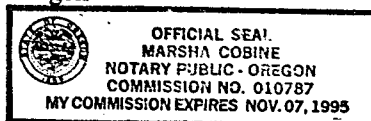
STATE OF OREGON)
 : ss.
County of Klamath)



The foregoing instrument was acknowledged before me this 27th day of October, 1995 by Margie F. Fitzgerald.

Marsha Cobine
Notary Public for Oregon

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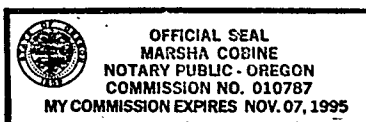


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STATE OF OREGON)
 : ss.
County of Klamath)

The foregoing instrument was acknowledged before me this 27th day of October, 1995 by Fred Kowal, who is a Vice President of First Interstate Bank of Oregon, N.A., on behalf of the association.

Marsha Cobine
Notary Public for Oregon



STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of First Interstate Bank Of Oregon the 27th day
of October A.D., 19 95 at 3:43 o'clock P M., and duly recorded in Vol. M95,
of Mortgages on Page 29467.

FEE \$50.00

Bernetha G. Letsch, County Clerk
By Annette Mueller