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Vol. ma6 Page 23391

P&H DRAFT #.1  
March 4, 1996  
5:00pm

K-29472  
MODIFICATION OF NOTE AND MORTGAGES

This MODIFICATION AGREEMENT (the "Agreement"), entered into on this 27<sup>th</sup> day of March, 1996 by and between JOHN M. MOSBY and MARILYN J. MOSBY, husband and wife, having a mailing address of Flower Valley Plaza, 1133 North H. Street, Suite L, Lompoc, California 93436 (collectively, the "Borrower"), and MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY (successor by merger to Connecticut Mutual Life Insurance Company), a Massachusetts corporation having a mailing address at 1295 State Street, Springfield, Massachusetts 01111-0001 (the "Lender").

RECITALS

1. Borrower and Lender entered into (a) a loan transaction in the original principal amount of \$1,200,000.00 ("Loan A"), which is evidenced by a Promissory Note in said amount dated December 23, 1977 ("Note A"); and (b) a loan transaction in the original principal amount of \$785,000.00 ("Loan B"), which was evidenced by a Promissory Note in said amount dated June 30, 1978 ("Note B").

2. Loan A is secured by a Mortgage and Security Agreement dated December 23, 1977, recorded with the County Clerk of Klamath County, Oregon at Volume M 77 of Mortgages on Page 25057 ("Mortgage A"), which Mortgage is a first lien on certain property ("Property A") described in Exhibit A attached hereto; Loan B was secured by a Mortgage and Security Agreement dated June 30, 1978, recorded in the public records of the County of Jackson, State of Oregon, as Document No. 78-14751 in Volume M78 of Mortgages on Page \_\_\_\_\_ ("Mortgage B"), which Mortgage was a first lien on certain property ("Property B") described in Exhibit B attached hereto.

3. Pursuant to a certain Consolidation Agreement dated June 30, 1978, by and between Borrower and Lender, recorded in the Records of Jackson County, Oregon as Document No. 78-14752 in Volume M78 of Mortgages on Page 14279 (the "Consolidation"), Mortgage A and Mortgage B were extended, spread and consolidated so that Mortgage A and Mortgage B each cover and act as a lien on all of Property A and all of Property B, as though all of Property A and all of Property B had been originally described in each of said Mortgage A and Mortgage B. In effect, and in law, Mortgage A and Mortgage B constitute one Mortgage upon Property A and Property B securing both Loan A and Loan B in the aggregate amount of \$1,985,000.00 plus interest, said Mortgage A and said Mortgage B being a first lien upon the premises described in Exhibit A and Exhibit B hereto. Note B was paid in full on May 23, 1995 and pursuant to a certain Partial Release of Mortgage dated November 20, 1991 and a certain

RETURN

KLAMATH COUNTY TITLE COMPANY

P.O. Box 254213/125376.3

Klamath Falls, OR 97601

1 Partial Release of Mortgage dated May 23, 1995, various parcels of Property B were released  
2 from the lien of Mortgage A, Mortgage B and the Consolidation.  
3

4 4. This Agreement, Note A, Mortgage A, Mortgage B, the Consolidation, and any  
5 other documents now or hereafter executed in connection with such instruments and/or this  
6 Agreement are sometimes collectively referred to herein as the "Loan Documents."  
7

8 5. Loan A matured by its terms on January 1, 1996, and Borrower has requested that  
9 *inter alia*, Lender extend the maturity date of Loan A to January 1, 2001.  
10

11 6. As a condition to extending the maturity date of the Loan A, Lender requires that  
12 Borrower enter into this Agreement.  
13

14 7. In consideration of the foregoing, and for One Dollar (\$1.00) and other valuable  
15 consideration received to its satisfaction, Lender and Borrower agree to modify the terms and  
16 conditions of Loan A and the Loan Documents as more specifically set forth in this Agreement.  
17

#### 18 TERMS OF AGREEMENT

19  
20 A. MODIFICATION OF NOTE A. Borrower and Lender agree that the terms of  
21 Note A are hereby modified in accordance with the following:  
22

- 23 (1) Loan A shall mature, and the entire outstanding balance of principal and  
24 all accrued and unpaid interest thereon, together with all other amounts  
25 due under Note A, shall be due and payable in full, on January 1, 2001.  
26
- 27 (2) Commencing as of January 1, 1996, interest shall be paid on all unpaid  
28 balances under Note A at the fixed rate of 9.125% per annum.  
29
- 30 (3) Commencing with the payment due April 1, 1996, quarterly payments of  
31 principal and interest in the amount of \$22,489.46 shall be due and  
32 payable, in arrears, on January 1, April 1, July 1 and October 1 of each  
33 calendar year during the term of Loan A.  
34
- 35 (4) Any sum payable pursuant to Note A not paid when due shall bear interest  
36 at the rate of 15% per annum from the due date thereof.  
37
- 38 (5) Note A is hereby modified to the extent that all references therein to and  
39 descriptions therein of the Loan and the Mortgage shall be deemed to refer  
40 to and describe Loan A and Mortgage A as modified by this Agreement.  
41

42 B. MODIFICATION OF MORTGAGE A. Borrower and Lender agree that the  
43 terms of Mortgage A are hereby modified in accordance with the following:

- (1) Loan A shall mature, and the entire outstanding balance of principal and all accrued interest and unpaid interest thereon, together with all amounts due under Note A, shall be due and payable in full on January 1, 2001.
- (2) The references to the rate of "10% per annum" in paragraphs 6, 10 and 20 are hereby deleted and replaced with "15% per annum".
- (3) Mortgage A is hereby modified to the extent that all references therein to and descriptions therein of the Loan and the Note shall be deemed to refer to and describe Loan A and Note A as modified by this Agreement.

C. MODIFICATION OF MORTGAGE B. Borrower and Lender agree that the terms of Mortgage B are hereby modified in accordance with the following:

- (1) Loan A shall mature, and the entire outstanding balance of principal and all accrued interest and unpaid interest thereon, together with all amounts due under Note A, shall be due and payable in full on January 1, 2001.
- (2) The references to the rate of "10% per annum" in paragraphs 6 and 10 are hereby deleted and replaced with "15% per annum".
- (3) Mortgage B is hereby modified to the extent that all references therein to and descriptions therein of the Loan and the Note shall be deemed to refer to and describe Loan A and Note A, each as modified by this Agreement.

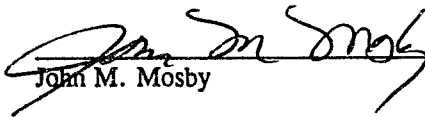
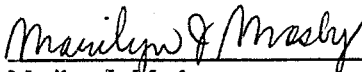
D. MISCELLANEOUS.

- (1) Except as specifically modified hereby, all of the terms and conditions of Note A, Mortgage A, Mortgage B, the Consolidation, and the other Loan Documents shall remain in full force and effect, and Borrower ratifies and affirms its obligations, terms, conditions, covenants, representations and warranties contained therein, except to the extent expressly modified hereby. Borrower agrees to be bound by the terms and conditions of said instruments, as modified by this Agreement.
- (2) Borrower represents and warrants that this Modification Agreement will not cause intervening liens to become prior to the lien of Mortgage A or the lien of Mortgage B. If any such intervening lien exists or hereafter arises, Borrower shall cause such intervening lien to be released or subordinated to the lien of the applicable mortgage, without limiting any other right or remedy available to Lender. This Modification Agreement does not modify or affect the priority of the lien of either Mortgage A or Mortgage B as to the obligations it previously secured.

- 1  
2 (3) The rights and duties of the parties under this Agreement shall be  
3 governed by the laws of Connecticut, except to the extent the laws of the  
4 State of Oregon may apply to Lender's exercise of its remedies hereunder.  
5  
6 (4) This Agreement shall be binding upon Borrower and Lender, and each of  
7 their respective successors and assigns.  
8

9 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a  
10 sealed instrument by their duly authorized representatives as of the date first above written.  
11

12 **BORROWER:**

13  
14  
15   
16 John M. Mosby  
17  
18   
19 Marilyn J. Mosby  
20  
21  
22  
23

24 **LENDER:**

25 **MASSACHUSETTS MUTUAL LIFE**  
26 **INSURANCE COMPANY** (successor  
27 by merger to Connecticut Mutual  
28 Life Insurance Company)  
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30

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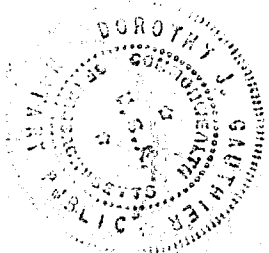
By: 

Name: DAVID G. LAURETTI  
Title: Senior Managing Director

1 ~~MASSACHUSETTS~~  
 2 STATE OF ~~CONNECTICUT~~  
 3 ~~HAMPDEN~~  
 4 COUNTY OF ~~HARTFORD~~

)  
 ) ss.: ~~Hartford~~  
 )

5 On this 16 day of April, 1996, before me, personally appeared David A.  
 6 Sauette, the Senior Managing Director of MASSACHUSETTS MUTUAL LIFE INSURANCE  
 7 COMPANY, signer and sealer of the foregoing instrument and acknowledged the same to be  
 8 his/her free act and deed and the free act and deed of said corporation.



Dorothy J. Hawthorne  
 Commissioner of the Superior Court  
 Notary Public

My Commission Expires: 3/30/2001

18 STATE OF CALIFORNIA )  
 19 ) ss.: \_\_\_\_\_  
 20 COUNTY OF Santa Barbara

March 27, 1996

22 Then personally appeared the above-named JOHN M. MOSBY, who, being by me duly  
 23 sworn, signed and sealed said instrument, and acknowledged said instrument to be his free act  
 24 and deed.



Sharon C. Prihoda

Notary Public

My Commission Expires: 4-29-98

32 STATE OF CALIFORNIA )  
 33 ) ss.: \_\_\_\_\_  
 34 COUNTY OF Santa Barbara

March 27, 1996

36 Then personally appeared the above-named MARILYN J. MOSBY, who, being by me  
 37 duly sworn, signed and sealed said instrument, and acknowledged said instrument to be her free  
 38 act and deed.



Sharon C. Prihoda

Notary Public

My Commission Expires: 4-29-98

EXHIBIT A

"Property A" (Property Description)

Bar - V - Klamath County

EXHIBIT A

The following described real property situate in Klamath County, Oregon:

In Township 31 South, Range 8 East of the Willamette Meridian:

Section 5 SW $\frac{1}{4}$

Section 7 NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , Lots 1 and 2, BUT EXCEPTING from said Lots 1 and 2 the portion thereof lying West of a line parallel to and 50 feet Easterly from the located center line of the Southern Pacific Company right of way.

Section 15 SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$

Section 17 N $\frac{1}{2}$ , SW $\frac{1}{4}$

Section 20 ALL

Section 21 S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$

Section 28 W $\frac{1}{2}$

Section 29 ALL

Section 30 E $\frac{1}{2}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$

Section 31 E $\frac{1}{2}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$  of Lot 1, E $\frac{1}{2}$ E $\frac{1}{2}$  of Lot 2, E $\frac{1}{2}$  of NW $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$  of SW $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$

Section 32 ALL

Section 33 S $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , S $\frac{1}{2}$

Section 34 S $\frac{1}{2}$ N $\frac{1}{2}$ , N $\frac{1}{2}$ S $\frac{1}{2}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$

In Township 32 South, Range 8 East of the Willamette Meridian:

Section 4 Lots 3 and 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$

Section 5 Lots 1 and 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ , those portions of Lots 3 and 4, S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$  which lies Southerly and Easterly from the center line or thread of Williamson River; W $\frac{1}{2}$ SE $\frac{1}{4}$

Section 6 Lots 1 and 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ , Lot 3, Lot 4 (BUT EXCEPTING from said Lot 4 a parcel 417.42 feet by 208.71 feet described as Parcel 2 in Deed Book 331 at page 173), S $\frac{1}{2}$ NW $\frac{1}{4}$ , Lots 6 and 7, that part of the E $\frac{1}{2}$ SE $\frac{1}{4}$  lying Southerly and Easterly of the center line or the thread of Williamson River.

Section 8 SW $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{2}$ SE $\frac{1}{4}$

TBM/27143/5/19/99  
03/04/95-MSB/H1

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5EXHIBIT B**"Property B" Property Description**

P-1

See page 1 for vesting and encumbrances, if any.

Description of the tract of land which is the subject of this report:

**PARCEL 1:** The following described parcels in Township 40 South, Range 2 East of the Willamette Meridian, Jackson County, Oregon.

**TRACT A:** The North half of the North half, the Southeast quarter of the Northeast quarter, the Southwest quarter of the Northwest quarter, the West half of the Southwest quarter, and the Southeast quarter of Section 1.

**TRACT B:** All of Section 2.

**EXCEPTING THEREFROM**, the following: Beginning at a point which bears South  $24^{\circ} 48' 40''$  East a distance of 1897.15 feet from the North quarter corner of said Section 2; thence South  $48^{\circ} 02' 26''$  East a distance of 552.55 feet; thence on a curve to the right, having a radius of 430.0 feet a distance of 323.98 feet; thence South  $04^{\circ} 52' 10''$  East a distance of 210.75 feet; thence on a curve to the left, having a radius of 220.0 feet, a distance of 162.85 feet; thence South  $42^{\circ} 43' 04''$  West a distance of 60.0 feet; thence North  $38^{\circ} 10' 26''$  West a distance of 189.6 feet; thence South  $89^{\circ} 13' 34''$  West a distance of 275.5 feet; thence North  $40^{\circ} 41' 11''$  West a distance of 575.90 feet; thence North  $01^{\circ} 09' 34''$  East a distance of 465.67 feet; thence North  $89^{\circ} 10' 25''$  East a distance of 160.60 feet to the point of beginning.

**TRACT C:** The West half of the Northeast quarter of Section 3.

**TRACT D:** The North half of the Northeast quarter of Section 11.

**TRACT E:** The North half of the Northwest quarter, the Northwest quarter of the Northeast quarter, the Southeast quarter of the Northwest quarter, and the East half of the Southwest quarter of Section 12.

## CONTINUATION OF DESCRIPTION-Page 2, No. 48667)

TRACT F: The Northwest quarter, and the Northwest quarter of the Northeast quarter lying West of Immigrant Creek of Section 13.

TRACT G: The Southeast quarter of the Northeast quarter of Section 14.

PARCEL II: The following described parcels in Township 40 South, Range 3 East, of the Willamette Meridian, Jackson County, Oregon.

TRACT A: The West half of the Northwest quarter of Section 6.

TRACT B: The Southwest quarter of the Northwest quarter, all of the Southwest quarter of Section 8.

TRACT C: The Northeast quarter of the Northwest quarter, and the Southeast quarter of the Northeast quarter of Section 17.

TRACT D: The North half of the Northeast quarter, the Southwest quarter of the Northeast quarter, the Northwest quarter of the Southeast quarter of Section 20.

PARCEL III: The following described parcels in Township 39 South, Range 2 East, Willamette Meridian, Jackson County, Oregon.

TRACT A: Beginning at the Southeast corner of Section 34, Township 39 South, Range 2 East of the Willamette Meridian, Jackson County, Oregon; thence North along the line between Sections 34 and 35, said Township and Range, a distance of 14.00 chains to the center of Emigrant Creek; thence North  $64^{\circ}$  West along the center of said Creek, a distance of 8.00 chains; thence North  $68^{\circ}$  West along the center of said Creek, a distance of 1.60 chains; thence South  $50^{\circ}$  West, 7.50 chains; thence South  $40^{\circ}$  West, 4.86 chains; thence South  $89^{\circ}$  West, 3.72 chains; thence South  $16^{\circ}$  West, 2.87 chains; thence South  $20^{\circ}$  West, 3.45 chains; thence South, 2.60 chains to the South line of said Section 34; thence East along said South line, a distance of 23.19 chains to the point of beginning.

TRACT B: The Southwest quarter of Section 35, in Township 39 South, Range 2 East of the Willamette Meridian, Jackson County, Oregon. EXCEPTING THEREFROM, Beginning at a  $3/4" \times 18"$  iron bolt on the existing Northwesterly right of way line of the Greensprings Highway as now located, said bolt bears 1244.60 feet East and 875.40 feet South of the quarter corner common to Sections 34 and 35 in Township 39 South, Range 2 East of the Willamette Meridian, Jackson County, Oregon, for the point of beginning; thence along said right of way line South  $42^{\circ} 54' 30"$  West, 125.64 feet; thence North  $52^{\circ} 51' 30"$  West, 200.0 feet to a bolt; thence North  $37^{\circ} 08' 30"$  East, 125.0 feet to a  $3/4" \times 18"$  bolt; thence South  $52^{\circ} 51' 30"$  East, 212.62 feet to the point of beginning.

TRACT C: The Southwest quarter of the Southeast quarter of Section 35.

(Continued)



(CONTINUATION OF DESCRIPTION-Page 3, No. 48667)

TRACT D: All that portion of the Southeast quarter of the Southeast quarter of Section 35, and the South half of the North half and the South half of Section 36, Township 39 South, Range 2 East of the Willamette Meridian, Jackson County, Oregon, lying and being Southerly of a line generally described as follows: Beginning at the point where the new Ashland-Klamath Falls Road (as of 1920) intersects the West line of the Southeast quarter of the Southeast quarter of said Section 35; thence following the center line of said road, Easterly to a point where said road intersects the gulch known as "Soda Gulch", said point being about 10 rods South of the center of said Section 36; thence in a North-easterly direction following the meanderings of said Gulch, to where said Gulch intersects the East line of said Section 36, and which point is 2100.0 feet South, more or less, from the Northeast corner of said Section 36. EXCEPTING THEREFROM, a living spring on the Southerly side of said Ashland-Klamath Falls Road, between Stations 283+61.2 and 280+99.5, and in the North half of the Southwest quarter of said Section 36, together with a strip of land 100.0 feet in width extending South from said road to a point 10.0 feet South of the said living spring, the west side of said strip being about 300.0 feet long and the East side being about 525 feet long.

ALSO, EXCEPTING THEREFROM land conveyed to the State of Oregon, by and through its State Highway Commission, by deed recorded in Volume 224, Page 159, Deed Records of Jackson County, Oregon.

ALSO, EXCEPTING THEREFROM, the following: A parcel of land conveyed to the State of Oregon, by and through its State Highway Commission, by deed recorded in Volume 197, Page 287 of Deed Records of Jackson County, Oregon, and more particularly described as follows: Beginning at a point on the Northerly right of way line of the Green Springs Highway, said point being 30 feet distant from (when measured at right angles to) the center line of said Highway at Engineer's Station 234+40.0, said point being 985.6 feet West and 917.4 feet North of the South quarter corner of Section 36, Township 39 South, Range 2 East of the Willamette Meridian, in Oregon; thence North 61° 58' West, 230.0 feet; thence North 20° 51' East, 205.6 feet; thence South 80° 00' East, 100.0 feet; thence South 22° 24' East, 262.4 feet to the Northerly right of way line of the above mentioned highway; thence following the said Northerly right of way line on a 234.6 foot radius curve to the left (the long chord of which bears South 59° 37' West) 80.0 feet to the point of beginning.

Code 5-2	Account No. 402E	1, 3, 4, 7 and 45
Code 5-2	Account No. 403E	31, 35, 55 and 64
Code 5-2	Account No. 34392E	11
Code 5-2	Account No. 35392E	3 and 4
Code 5-2	Account No. 36392E	2

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title the 1st day  
of August A.D. 19 96 at 3:19 o'clock P.M., and duly recorded in Vol. M96  
of Mortgages on Page 23391

FEE \$50.00

Bernetha G Letsch, County Clerk

By [Signature]