

Loan No. 12403

MTC 43314-KR

OREGON MORTGAGE AND SECURITY AGREEMENT

THIS OREGON MORTGAGE AND SECURITY AGREEMENT, (hereinafter referred to as the "Mortgage"), made this 9th day of February, 1998, by and **LON E. BALEY** and **NANCY L. BALEY**, husband and wife, and **MARK R. TROTMAN** and **DAWN M. TROTMAN**, husband and wife (hereinafter collectively referred to as "Mortgagor"), and **THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK**, a New York corporation, having its principal place of business at 1740 Broadway, New York, New York 10019, and whose mailing address is One Mid Rivers Drive, Suite 120, St. Peters, Missouri 63376, (hereinafter referred to as "Mortgagee").

WITNESSETH that to secure the payment of an indebtedness in the sum of Nine Hundred Fifty Thousand and 00/100 Dollars (\$950,000.00), lawful money of the United States, to be paid with interest thereon according to a Promissory Note bearing even date herewith, payable in installments, the last of which matures on April 1, 2013, (hereinafter referred to as the "Note"), to which note reference is hereby made, Mortgagors hereby **GRANT, BARGAIN, SELL, CONVEY AND WARRANT** to the Mortgagee, the real property located in Klamath County, Oregon, and more particularly in Exhibit "A" attached hereto and made a part hereof by this reference.

TOGETHER WITH all buildings, improvements, mobile homes, fixtures and permanent plantings located therein or thereon or appurtenant thereto, and all substitutions, replacements, and improvements hereafter made thereto or placed therein or thereon; all other equipment now or hereafter attached to and used in connection therewith; all rights-of-way, easements, crops and other farm products, income and proceeds therefrom, tenements, hereditaments, remainders, reversions, privileges, and appurtenances thereunto belonging, however evidenced, which are used or enjoyed with said real property or belonging to the same or which hereafter may be acquired and so used or enjoyed.

TOGETHER WITH all water and water rights, whether riparian, appropriate or otherwise and whether or not appurtenant, all ditch and ditch rights and any shares of stock, licenses or permits evidencing such water or ditch rights, and all wells, reservoirs, dams, embankments or fixtures.

TOGETHER WITH a security interest in and to all potato storage, washing and processing fixtures and equipment now or hereafter located on and used in connection with the real property described in Exhibit "A", including, but not limited to, humidifiers, fans, ventilation pipe, cooling units and all other potato storage, washing and processing facilities, fixtures and equipment now or hereafter owned by Mortgagor and located on the property described in Exhibit "A", together with all substitutions, replacements, and accessions thereto. Mortgagor hereby (a) warrants that said equipment shall be used only on the above described real property; (b) covenants that no other security interests in said equipment have been given; (c) agrees not to sell, lease, encumber, or otherwise dispose of said irrigation equipment, or remove the same from the county in which the same is now situated, without the Mortgagee's prior written consent provided, however, that Mortgagee's consent shall not be required in the event Mortgagor desires to replace any item of said irrigation equipment with equipment of comparable type and value in the ordinary course of Mortgagor's business; and (d) agrees to defend against all adverse claims and demands which may be made against said irrigation equipment.

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TOGETHER WITH all right, title and interest of Mortgagor, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the property described in Exhibit "A" to the center line thereof.

TOGETHER WITH all judgments, awards of damages, settlements and payments or security (i) hereinafter made as a result of or in lieu of any taking of all or any part of the property under the power of eminent domain or for any damages to the property or the improvements thereon or any part thereof and (ii) hereafter made for any damage to the property or the improvements thereon or any part thereof resulting from exercise or attempted exercise of mining rights or claims, however reserved or asserted, and resulting from the disturbance of any of the surface of said property. Mortgagee may use, pay or apply the monies in the same manner and with the same effect as provided hereinafter for disposition of insurance proceeds. Mortgagor does hereby covenant and agree that they will not give such consent as may be required of the owner for mining or other surface disturbance by the terms of any patent, deed, statute, law or otherwise, without the prior written consent of the Mortgagee, which such consent shall not be unreasonably withheld.

TOGETHER WITH all contract rights, chattel paper, documents, accounts and general intangibles, any right to performance, entitlement to payment in cash or in kind, or other benefits under any current or future governmental program which pertain to the real estate which is the subject of this Mortgage, whether now or hereafter existing or acquired.

ALL OF WHICH real property and the rights and interests in the preceding paragraphs described (hereinafter collectively referred to as the "Property") shall be deemed to constitute a portion of the security hereby given for the payment of the indebtedness and the performance of the obligations evidenced and secured hereby.

TO HAVE AND TO HOLD the same unto the Mortgagee, its successors and assigns, forever. If the Mortgagors shall pay said indebtedness according to the tenor and effect of said Note or any extension, renewal or modification thereof, and shall keep and perform all and singular covenants and agreements herein contained, then this conveyance shall be null and void; otherwise, it shall remain in full force and effect.

THE MORTGAGOR HEREBY COVENANTS AND AGREES WITH THE MORTGAGEE THAT:

1. **WARRANTIES OF TITLE AND AUTHORITY:** Mortgagor hereby represents and warrants that he is lawfully seized or entitled to be seized of indefeasible fee title to the Property, that Mortgagor has the authority and right to execute and deliver this Mortgage, that Mortgagor shall defend the title to the Property against all claims and demands whatsoever, that the Property is free and clear of any and all prior liens, claims, encumbrances, restrictions, encroachments, and interests whatsoever in favor of any third party, (except those matters disclosed by Schedule B of the title policy issued in connection herewith), and that any and all obligations it may have incurred in connection with the Property are current and without default. Mortgagor hereby releases, waives, and relinquishes all exemptions and homestead rights which may exist with respect to the Property. If the Mortgagor is a corporation, partnership or limited liability company, each person executing this instrument on behalf of Mortgagor individually and personally represent and warrant that this Mortgage and each other instrument signed in the name of such entity and delivered to evidence or further secure the obligations secured hereby is

in all respects binding upon such entity as an act and obligation of said partnership or corporation.

2. **OBLIGATIONS MANDATORY:** Mortgagor shall promptly pay or cause to be paid to Mortgagee, or order, and shall promptly perform or cause to be performed, each and every payment and obligation on the part of the Mortgagor provided to be paid or performed hereunder or in connection with the obligations evidenced and secured hereby when due. All of such payments and obligations are mandatory, and Mortgagor's failure to accomplish any of the same shall constitute a default under this Mortgage.

3. **HAZARDOUS MATERIALS:** Except in the ordinary course of business and in material compliance with all applicable Environmental Laws, Mortgagor shall not permit or cause any Hazardous Material to be located on the Property. Mortgagor hereby indemnifies the Mortgagee and agrees to defend and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of every kind and nature, paid, incurred, suffered by or asserted against the Mortgagee for, with respect to, or as a direct or indirect result of the following, regardless of whether or not caused by, or within the control of, Mortgagor, to wit:

- (i) the presence, use, manufacture, generation, processing, distribution, storage or handling of any Hazardous Material on or under the Property in violation of any Environmental Law, or any escape, seepage, leakage, spillage, discharge, emission, release or disposal of any Hazardous Material on or from the Property, or the migration or release or threatened migration or release of any Hazardous Material to or from the Property; or
- (ii) any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Material on or from the Property; or
- (iii) any Environmental Claim, or the filing or imposition of any environmental lien against the Property resulting from, in connection with or arising out of any of the matters referred to in this paragraph 4.

As used herein, "Hazardous Material" means any substance, whether solid, liquid or gaseous which is listed, defined or regulated as a "hazardous substance", "hazardous waste", "solid waste" or otherwise classified as hazardous or toxic in or pursuant to any Environmental Law (as herein defined), or which contains asbestos, any polychlorinated biphen, radon, urea formaldehyde, foam insulation, explosive or radioactive material, motor oil or fuel, or which is a hazard to the environment or human health.

As used herein, "Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any judicial interpretation of any of the foregoing, regulating, relating to or imposing liability or standards of conduct concerning Hazardous Materials, or which otherwise relates to the manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Material, including, but not limited to, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act.

and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, and their state and local counterparts.

As used herein, "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action, at any time threatened or instituted pursuant to any applicable Environmental Law, against Mortgagor or all or any part of the Property, or with respect to any condition, use or activity on the Property, and any claim at anytime made by any person or entity against Mortgagor, or against or with respect to the Property or any condition, use or activity on the Property, relating to damage, contribution, cost, recovery, compensation, loss or injury resulting from, or in any way arising in connection with, any Hazardous Material or Environmental Law.

Mortgagor shall promptly notify Mortgagee in writing of any order or pending or threatened action by any regulatory agent or other governmental body, or any claims made by any third party, relating to Hazardous Materials on, or emanations from, the Property encumbered hereby, and shall promptly furnish Mortgagee with copies of any correspondence of legal pleadings in connection therewith. At any time hereafter, terminating only upon repayment in full of the indebtedness secured hereby (and for such purpose repayment from proceeds of foreclosure sale shall not be deemed repayment of such indebtedness), if after diligent investigation Mortgagee reasonably believes that an environmental hazard exists on the property, Mortgagee may require Mortgagor to provide Mortgagee, at the expense of Mortgagor, an inspection or audit of the Property encumbered hereby, prepared by a qualified consultant approved by Mortgagee, certifying as to the presence or absence of Hazardous Materials, or to permit Mortgagee to so inspect or audit the Property encumbered hereby at Mortgagor's expense, and Mortgagor hereby grants Mortgagee, its employees, agents and independent contractors, the right to enter upon the Property encumbered hereby for the purpose of conducting tests, soil borings, the installation of monitoring wells and such other tests as Mortgagee deems necessary or desirable. In addition, Mortgagee shall have the right, but shall not be obligated, to notify any state, federal or local governmental authority of information which may come to its attention with respect to Hazardous Materials on or emanating from the Property encumbered hereby and Mortgagor irrevocably releases Mortgagee from any claims of loss, damage, liability, expense or injury relating to or arising from, directly or indirectly, any such disclosure.

PROVIDED, HOWEVER, that nothing contained in the foregoing paragraphs relating to Hazardous Materials shall be construed to prohibit or limit the right of the Mortgagor to properly use and store substances on the Property in the ordinary course of Mortgagor's business so long as such storage and use are in compliance with all statutes, laws, rules and regulations applicable thereto.

The liability of Mortgagor to Mortgagee under the covenants of these paragraphs relating to hazardous materials shall survive any foreclosure of this Mortgage or any transfer of the Property encumbered hereby by deed in lieu of foreclosure.

4. **MAINTENANCE OF PROPERTY:** Mortgagor hereby agrees: (a) not to commit or suffer waste of said premises or impairment in any manner of the agricultural value of the land and, without limiting that generality, will cultivate, irrigate, fertilize, spray, prune, keep non-timber land free from foul and noxious weed, brush and other undesirable growth, provide for stock selection, crop rotation, drainage, prevention of erosion and pasture maintenance in accordance with good husbandry and approved methods of agricultural developments; (b) to

maintain the Property at all times in good condition and repair; (c) not to remove, damage, or demolish any building, fixture, or improvement thereon; not to cause or permit any building, fixture, or improvement thereon to be removed, damaged, or demolished; to complete promptly and in a good and workmanlike manner any building, fixture, or improvement on the Property which may for any reason be constructed; (d) to restore promptly and in a good and workmanlike manner any building, fixture, or improvement on the Property which may for any reason be damaged or destroyed; (e) to comply at all times with all laws, ordinances, regulations, covenants, and restrictions in any manner affecting the Property; not to commit or permit any act upon the Property in violation of law; to do all acts which by reason of the character or use of the Property may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general and (f) to allow Mortgagee to inspect the Property at all reasonable times during the term hereof.

5. **HAZARD INSURANCE COVERAGE:** Mortgagor shall secure and at all times maintain an insurance policy or policies in a form and with companies reasonably satisfactory to Mortgagee, and providing coverage in an amount satisfactory to the Mortgagee, in its sole judgment, upon the buildings, fixtures, and improvements now existing or hereafter erected or placed upon the Property, and insuring against the perils of fire, extended coverage, vandalism, and malicious mischief, and deliver proof of such policies to the Mortgagee. Each such policy shall provide for losses to be payable to Mortgagor and Mortgagee jointly to the extent of the interest of the Mortgagee in the Property. In the event of loss, Mortgagor shall give immediate notice to Mortgagee which may, but without any obligation to do so, make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss to Mortgagor and Mortgagee jointly to the extent of the interest of the Mortgagee in the property. In the event Mortgagor elects to rebuild or repair the loss, such funds shall be applied first in payment of the costs of such replacement or repair, with the balance thereof in reduction of the indebtedness secured hereby. Within Thirty (30) days following occurrence of the loss, Mortgagor shall give Mortgagee notice of its election to rebuild or repair the loss, in which case Mortgagor shall commence work toward such replacement or repair at the earliest possible time, weather permitting, but not more than sixty (60) days following the date of the Mortgagor's notice of his intention to repair or rebuild. Mortgagor shall substantially complete said repairs at the earliest possible time, weather permitting, but in any event not more than three (3) months after work toward repair or replacement has commenced. In the event Mortgagor fails to give Mortgagee notice of its election to rebuild or repair the loss within thirty (30) following occurrence of the loss, fails to commence work towards replacement or repair within sixty (60) days following the date of the Mortgagor's notice of his intention to repair or rebuild or fails to complete same within a period of three (3) months after work toward repair or replacement has commenced, then, and in any of those events, all insurance proceeds shall be paid to the Mortgagee until the indebtedness secured hereby is fully discharged, with the balance, if any, payable to Mortgagor, and in that event Mortgagor hereby agrees to execute any and all endorsements necessary to Mortgagee's negotiation of payments or to execute any and all consents necessary for insurance carriers to make payment directly to Mortgagee. Any application of insurance proceeds to the indebtedness secured hereby shall not excuse payment of the regular installment payments called for hereunder. In the event Mortgagor fails to secure and maintain any of the insurance coverages as provided in this paragraph, Mortgagee may procure such insurance on Mortgagor's behalf, and at Mortgagor's sole cost and expense, in favor of the Mortgagee alone. It is hereby acknowledged by Mortgagee that the coverages and amounts of the insurance policies herein provided to be secured and maintained by Mortgagor, are for the protection of Mortgagee's interest and that Mortgagor is free to secure such additional

insurance coverage relating to the Property as Mortgagor may, in his sole discretion, determine to be advisable.

6. **PAYMENTS PROTECTING AGAINST LIENS:** Mortgagor shall pay before delinquent, all taxes, water charges, assessments, or other charges or impositions levied against or affecting the Property; or which might become a lien thereon, and shall promptly deliver all receipts for such payments to Mortgagee upon request. Mortgagor shall also pay, when due, any and all sums constituting an encumbrance, charge, or lien upon the Property, or any part thereof, which may at any time appear to Mortgagee to be prior or superior to the interest of Mortgagee hereunder. In the event of the enactment after this date of any law of Oregon or any political subdivision thereof in which the Property is located deducting from the value of the Property for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagors to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable ninety (90) days from the giving of such notice.

7. **MORTGAGEE'S PERFORMANCE IN MORTGAGOR'S STEAD:** Should Mortgagor fail to make any payment, to do any act or thing, or to perform any obligation herein provided to be paid, done, or performed, at the time and in the manner herein provided, Mortgagee may, but without any obligation to do so, and after notice to Mortgagors stating Mortgagee's intended payment or action, and without releasing Mortgagors from any obligation hereunder: (a) make, do, pay, or perform the same in such manner and to such extent as Mortgagee may deem reasonably necessary or desirable to protect the security hereof or to protect any other legitimate interest of Mortgagee, Mortgagee for such purposes being authorized to enter upon the property at all reasonable times and to commence, appear in, or defend any action or proceeding purporting to affect the security hereof; or (b) pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the sole judgment of Mortgagee appears to be prior or superior to the interest of Mortgagee hereunder. In exercising any of such powers Mortgagee, in its absolute discretion, shall be entitled to incur any liability and expend whatever amounts it may deem necessary or desirable, including costs of evidence of title, court costs, and reasonable attorneys' fees. Mortgagee shall be subrogated to the claims and liens of those whose claims and liens are discharged or paid with the loan proceeds hereof.

8. **REPAYMENT OF ADVANCES:** Mortgagor shall immediately repay to Mortgagee all sums, with interest thereon as hereafter provided, which at any time may be paid or advanced by Mortgagee for the payment of insurance, taxes, other assessments, governmental, municipal, or other charges or impositions, title searches, title reports or abstracts, any obligation secured by a prior lien upon or prior interest in the Property, and any other advances made by Mortgagee which are or appear to be reasonably necessary or desirable, in Mortgagee's sole discretion, to maintain this Mortgage as a prior, valid, and subsisting lien upon the Property, to preserve and protect Mortgagee's or Mortgagor's interest therein or hereunder, or to preserve,

repair, or maintain the Property. All such advances shall be wholly optional on the part of Mortgagee, and Mortgagor's obligation to repay the same, with interest, to Mortgagee shall be secured by the lien of this Mortgage. The amount of each such advance shall, for the period during which it remains unpaid and both before and after judgment, bear interest at the then existing default rate of interest as defined in the Note secured hereby.

9. IMPROVEMENT DISTRICT LEVIES: If (i) all or any part of the property becomes embraced within the boundaries of any irrigation, levee, drainage or other improvement district (except school or road, and except any such districts in which the property is embraced as of the date of the Mortgage); and (ii) such district shall have power to issue bonds or other evidences of indebtedness requiring a levy and collection of taxes and/or assessments in payment thereof, and (iii) the Mortgagee in the exercise of its reasonable discretion determines that the inclusion of the property in said district materially impairs its secured position with regard to the property, then the Note secured hereby shall become due and payable at the option of the holder without notice, notwithstanding anything contained in said Note, this Mortgage, or any law hereafter enacted.

10. APPEARANCE IN PROCEEDINGS AFFECTING SECURITY: Mortgagor shall appear in and defend any action or proceeding purporting to or which might in any way affect the title to the Property or the security hereof (the phrase "the security hereof" when used in this Mortgage shall mean the interest of Mortgagor and Mortgagee in the Property, the rights, powers, duties, covenants, representations, warranties, and authority of Mortgagor and Mortgagee hereunder and under any instrument evidencing or further securing the obligations secured hereby, and the validity, enforceability, and binding effect hereof and of any instrument evidencing or further securing the obligations secured hereby). Should Mortgagee elect to appear in or defend any such action or proceeding, Mortgagors shall, to the extent permitted by law, pay all costs and expenses, (regardless of the particular nature thereof), reasonably and necessarily incurred by Mortgagee in connection therewith, including costs of evidence of title, court costs, and reasonable attorneys' fees.

11. TRANSFER OF OWNERSHIP: During the term of the loan secured hereby, legal and equitable title to the real estate described herein shall be vested solely in Mortgagor, and if at any time during said term, legal or equitable title to all or any part of said real estate shall, without the prior written consent of Mortgagee not be so vested, whether by voluntary conveyance, by operation of law or otherwise, the indebtedness secured hereby shall, at the option of Mortgagee, become immediately due and payable without notice. Provided, however, Mortgagee will not withhold its consent to a change in ownership if the new owner or owners have a satisfactory credit standing and qualified management ability to operate the property described in this Mortgage, in Mortgagee's reasonable judgment as a prudent lender, and the loan is not then in default. In addition, if the new ownership is of only part of the real estate, there shall be such a principal pay down on the loan as Mortgagee in its sole judgment as a prudent lender may require. Mortgagee's consent to such transfer (which such consent shall not be unreasonably withheld), if given, shall not release, diminish or in any way alter the liability of the Mortgagor or anyone who has assumed or guaranteed the payment of the indebtedness secured hereby or any portion thereof. Consent given by Mortgagee for any prior transfer shall not preclude Mortgagee from declaring the indebtedness secured hereby due and payable for any subsequent transfer without Mortgagee's prior written consent. A transfer in excess of twenty-five percent (25%) of the capital stock, partnership interests or member's interests, measured cumulatively, of the corporate, partnership or limited liability company Mortgagor, or of any

corporate, partnership or limited liability company successor in interest of the Mortgagor, shall be deemed a change of ownership requiring the Mortgagee's consent pursuant thereto.

12. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND RULES: Mortgagor represents that to the best of his knowledge he is not in violation of any Federal Reclamation Law or of any rules or regulation imposed by the Bureau of Reclamation or other governmental authority or by any irrigation district, and further warrants that the ownership by Mortgagor of the premises is in compliance with all applicable laws, rules and regulations governing ownership of land lying within any irrigation district of which they are aware.

13. NON-EXCESS LAND: If the Mortgagor is or becomes the owner of irrigable lands subject to and in excess of the land limitation provisions of the Federal Reclamation Laws and pursuant to the provisions thereof is required to designate part thereof as non-excess and part as excess land, Mortgagor agrees to designate any irrigable lands on the premises encumbered hereby, or so much thereof as may be so designated with said limitation provision, as non-excess land.

14. APPLICATION OF AWARDS AND PROCEEDS: Should the Property or any part thereof be taken or damaged by reason of (a) any public improvement or condemnation proceeding, or (b) the exercise or attempted exercise of mining rights or claims, however reserved or asserted, and resulting from the disturbance of any of the surface of the Property, Mortgagee shall be entitled to all compensation, awards, insurance proceeds, and other payments or relief therefor, provided, however, that Mortgagor shall be entitled to all sums paid or payable for loss of business or business interruption, and to all sums so paid or payable for taking, loss or damage to any fixture, structure or improvement provided Mortgagor elects to repair, rebuild or replace same, and notice, rebuilding or repair and completion of the work is done in accordance with the time periods set forth under Paragraph 5 hereof, regarding proceeds of Hazard Insurance. Mortgagee shall be entitled at its option to commence, appear in, and prosecute in its own name any action or proceeding, and to make any compromise or settlement, in connection with such taking or damage. Except as otherwise provided immediately hereinabove, all such compensation, awards, damages, rights, of action, proceeds, or other payments are hereby assigned to Mortgagee which may, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment, including reasonable attorneys' fee, incurred by it in connection with such compensation, awards, damages, rights of action, proceeds, or other payments), release any and all moneys so received by it or apply the same, or any portion thereof, on any indebtedness (whether or not then due) secured hereby. Any application of compensation, awards, damages, rights, of action, proceeds, or other payments to the indebtedness secured hereby shall not excuse payment of the regular installment payments called for hereunder. Each party hereto agrees to execute and deliver to the other such further assignments of such compensation, awards, damages, rights of action, proceeds, or other payments as may from time to time be required to carry out the wording and intent of this paragraph.

15. ASSIGNMENT OF RENTS AND INCOME: As additional security for the obligations secured hereby, Mortgagor hereby assigns to Mortgagee, during the term of this Mortgage, any and all rents, issues, royalties, income, and profits of and from the Property. Until Mortgagor defaults in the payment of any agreement hereunder, or in performance under any other instrument given to evidence or further secure the obligations secured hereby, Mortgagor shall have the right to collect and use all such rents, issues, royalties, income, and

profits earned prior to default. Upon any such default Mortgagor's right to collect or use any of such proceeds shall cease and Mortgagee shall have the right, with or without taking possession of the Property, and either in person, by agent, or through a court-appointed receiver (Mortgagor hereby consents to the appointment of Mortgagee as such receiver), to sue for or otherwise collect all such rents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected shall, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorneys' fees, be applied toward the payment of the obligations secured hereby in such order as Mortgagee, at its sole election decides. Such right of collection and use of such proceeds by Mortgagee shall obtain both before and after foreclosure of this Mortgage and throughout any period of redemption. The rights granted under this paragraph shall in no way be dependent upon, and shall apply without regard to, whether the Property is in danger of being lost, removed, or materially injured, or whether the Property or any other security is adequate to discharge the obligations secured by this Mortgage. Mortgagee's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Mortgagee thereafter to collect the same. Nothing contained herein, nor Mortgagee's exercise of its right to collect such proceeds, shall be, or be construed to be, an affirmation by Mortgagee of any tenancy, lease, option, or other interest in the Property, or any part thereof, directly to Mortgagee upon the demand of Mortgagee. No act or acts referred to in this paragraph shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice or any cause of action to foreclose this Mortgage.

16. NO WAIVER OF RIGHTS BY COLLECTION OF PROCEEDS: The entering upon and taking possession of the Property or the collection of rents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Property, or the application or release thereof as aforesaid, shall not cure or waive any default pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of, the regularly scheduled installments provided for in the Note secured hereby.

17. LIABILITY OF MORTGAGORS NOT AFFECTED BY ACTS OF MORTGAGEE: Without affecting (i) the liability of any person for payment of the indebtedness secured hereby or (ii) the lien hereof upon any of the Property not released pursuant hereto, the Mortgagee may, from time to time, without notice (a) renew the indebtedness, or extend the time, or agree to alter the terms, of payment of any of the indebtedness; (b) accept additional security of any kind; and (c) release any property securing the indebtedness.

18. APPLICATION OF PAYMENTS: If at any time during the term hereof Mortgagee receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note secured hereby, under this Mortgage, under all other instruments further evidencing or securing the obligations secured hereby, and under all other instruments and transactions to which Mortgagor and Mortgagee are parties, Mortgagee shall, notwithstanding any instructions which may be given by Mortgagor, have the right to apply such payment, installment, or sum or any part thereof, to such of the items or obligations then due as Mortgagee may in its sole discretion determine.

19. **THE MORTGAGOR AND MORTGAGEE AGREE:** That in the event the interest herein provided for, if fully collected by the Mortgagee hereof, shall result, because of the installment reduction of principal or increase in sums payable or any combination of those two (2) or any other cause at any time during the life of the loan, in an effective rate of interest which, for any such installment period transcends the limit of the usury law applicable to this loan, all sums in excess of those lawfully collectible as interest for the time in question shall, without further agreement of the parties hereto or notice by Mortgagee or Mortgagor, or vice-versa, be applied upon principal immediately upon receipt by Mortgagee, with the same force and effect as though the Mortgagor had specifically designated such extra sums to be so applied to principal and the Mortgagee had agreed to accept such extra payment(s) as a bonus-free prepayment. Notwithstanding the foregoing, however, Mortgagee may at any time and from time to time elect by notice in writing to the owner of the property affected by this Mortgage, to limit the collection of additional interest on each interest payment date to such sums which, when added to the said minimum interest, shall not cause the effective rate of return on the diminishing balance of principal owing hereunder to transcend the said limits permitted by law under the circumstances.

20. **APPOINTMENT OF RECEIVER:** In the event of the filing of any complaint or other proceedings wherein it is alleged that a default has occurred under this Mortgage, the Mortgagee may apply for and shall be entitled as provided by Oregon law to the appointment of a receiver to take possession of the premises and/or to collect the rents, issues and profits therefrom, with full power to lease the said premises, or any part thereof, and with such other powers as may be necessary.

21. **ACCELERATION AND FORECLOSURE:** Time is the essence hereof, provided, however, that no default shall occur under this Oregon Mortgage or the Promissory Note secured hereby (the "Loan Documents") until the expiration of the applicable cure period without cure having been accomplished. Unless some other cure provision applies under the terms of the Loan Documents, the following cure provisions shall apply, to wit:

A. For failure to make any payment when due under the Loan Documents, Mortgagor shall have fifteen (15) days measured from the date such payment was due to pay all sums then due and payable; and

B. For failure to perform any covenant, agreement or obligation due under the Loan Documents, Mortgagor shall have thirty (30) days measured from the date such performance was due to cure said default, provided, however, that if the Mortgagor shall have commenced the measures necessary to cure the default during the said thirty (30) day period, and if such cure cannot be completed within such thirty (30) day period through the exercise of due diligence by the Mortgagor, the Mortgagor shall have ninety (90) days measured from the date such performance was due to complete the measures necessary to cure the default.

Upon the occurrence of any default (as defined herein), or upon the discovery that any representation or warranty contained herein or in any instrument further evidencing or securing the obligations secured hereby was untrue when made, Mortgagee shall have the option, without further notice or demand, to declare all sums secured hereby immediately due and payable and to proceed to foreclose this Mortgage. In the event of foreclosure, Mortgagee shall be entitled as

provided by Oregon law to the appointment of a receiver of said Property and such receiver shall have, in addition to all the rights and powers customarily given to and exercised by such a receiver, all the rights and powers granted to the Mortgagee by the covenants contained in Paragraph 15 hereof. In any such proceeding Mortgagee shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys' fees. Mortgagors hereby waive any right it or its successors in interest may have in the event of acceleration or foreclosure to obtain a partial release of the Property from the lien of this Mortgage by paying less than the entire amount then secured hereby, or to partially redeem the Property by paying less than the amount necessary to effect redemption in toto. If a deficiency remains after proper application of the proceeds of sale of the Property, Mortgagors shall pay the same immediately after determination of the amount thereof. Such deficiency shall, both before and after judgment therefor is entered, bear interest at the then existing default rate of interest as defined in the note secured hereby. Mortgagee may foreclose this Mortgage on the Property in one proceeding or may by separate acts foreclose the Mortgage on the land and appurtenances and realize on the security interest in the equipment which is subject to this Mortgage, and may pursue one remedy without affecting its rights to pursue the other remedy and all net proceeds from the remedy undertaken shall be applied against the debt hereby secured but shall be a payment against the final amount due and shall not relieve the obligors from instalments next due thereafter. If Mortgagee's lien against equipment be realized on separately from the lien against real estate then Mortgagor, upon default, will:

A Put the Mortgagee in possession of the mortgaged equipment, on demand;

B Give Mortgagee the authority to enter any premises where said equipment is located and take possession thereof without further notice or demand;

C At the request of Mortgagee, Mortgagor will assemble equipment and make it available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both parties;

D Mortgagor agrees that a period of ten (10) days from the time notice is sent, by first class mail or otherwise, shall be a reasonable period of notification of a sale or other disposition of the equipment;

E Mortgagor agrees that any notice or other communication by Mortgagee to Mortgagor shall be sent to the mailing address of the Mortgagor as last given to Mortgagee;

F Mortgagor agrees to pay on demand the amount of all expenses reasonably incurred by Mortgagee in protecting or realizing on the equipment;

G If Mortgagee disposes of the equipment, Mortgagor agrees to pay any deficiency remaining after application of the net proceeds to any indebtedness secured hereby.

22. **RIGHTS CUMULATIVE AND NOT WAIVED:** The rights and remedies accorded by this Mortgage shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Mortgage or afforded by law or equity are distinct and cumulative

and may be exercised concurrently, independently, or successively. The failure on the part of Mortgagee to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver of any default shall not constitute a waiver of any subsequent or other default. Mortgagee shall be subrogated to the claims and liens of those whose claims and liens are discharged or paid with the loan proceeds hereof.

23. **NOTICES:** Any notices, demands or communication provided or required to be sent to either party hereunder or under the Promissory Note or Loan Agreement secured hereby shall be in writing, and shall be sent by United States Postal Service, postage prepaid, certified or registered, return receipt requested, or by courier, or personally delivered. All notices shall be deemed to have been delivered seventy-two (72) hours following deposit in the United States Postal Service or upon personal delivery if sent by courier or personally delivered. All such notices shall be addressed to the parties at the addresses listed below, or to such other addresses as the parties may from time to time designate in writing, to wit:

MORTGAGEE:

The Mutual Life Insurance Company of New York
One Mid Rivers Drive, Suite 120
St. Peters, Missouri 63376

Copy to:

Mutual of New York
1740 Broadway
New York, New York 10019

MORTGAGOR:

Lon E. Baley and
Nancy L. Baley
1459 Depot Road
Malin, OR 97632

Mark R. Trotman and
Dawn M. Trotman
P.O. Box 823
Merrill, OR 97633

Any address or name may be changed by notice in accordance with this paragraph. The inability to deliver because of a changed address of which no notice was given or rejection or other refusal to accept any notice shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the legal counsel for such party.

24. **FINANCIAL REPORTS:** During the term of the loan secured hereby, the individuals collectively referred to herein as the "Mortgagor", shall deliver to Mortgagee as soon as practicable after the end of each fiscal year, and in any event within 90 days thereafter, duplicate copies of their balance sheets and income statements as of the end of such fiscal year, in form satisfactory to Mortgagee and fairly presenting the financial condition of those individuals.

25. **BINDING ON SUCCESSORS:** This Mortgage shall be binding upon and shall inure to the benefit of the respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns of the parties hereto. The term "mortgagee" as used herein shall mean the owner and holder, including any pledgee, of the obligations secured hereby.

26. **INTERPRETATION:** The captions which precede the paragraphs of this Mortgage are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the

plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. In the event there is more than one Mortgagor hereunder, the liability of each shall be joint and several. The invalidity or unenforceability of any portion or provisions of this Mortgage shall in no way affect the validity or enforceability of the remainder hereof. This Mortgage shall be governed by and construed in accordance with the laws of the State of Oregon.

DATED the day and year first above written.

Nancy L. Baley
Nancy L. Baley

Lon E. Baley
Lon E. Baley

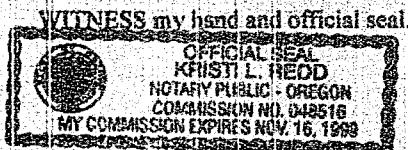
Dawn M. Trotman
Dawn M. Trotman

Mark R. Trotman
Mark R. Trotman

STATE OF OREGON

COUNTY OF KLAMATH

The foregoing instrument was acknowledged before me on this 9th day of February, 1998, by Lon E. Baley and Nancy L. Baley, husband and wife.



Kristi L. Redd
Notary Public, State of Oregon

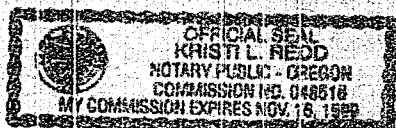
My Commission Expires: OREGON
Printed Name of Notary: Kristi L. Redd

STATE OF OREGON

COUNTY OF

The foregoing instrument was acknowledged before me on this 9th day of February, 1998, by Mark R. Trotman and Dawn M. Trotman, husband and wife.

WITNESS my hand and official seal.



Kristi L. Redd
Notary Public, State of Oregon

My Commission Expires: 11/16/99
Printed Name of Notary: Kristi L. Redd

EXHIBIT "A"
LEGAL DESCRIPTION

That portion of the S1/2 SW1/4 of Section 16, Township 41 South, Range 12, East of the Willamette Meridian, Klamath County, Oregon, as described as follows:

Beginning at the intersection of the Northeasterly line of the Great Northern Railroad right of way, 300 feet wide, as described in deed recorded in Volume 96, page 109, of Deed Records of Klamath County, Oregon, with the Northwesterly line of the Depot Road, 80 feet wide, as described in Deed recorded in Volume 96, page 173, of Deed Records of said County; thence North 71 degrees 45' East along said Depot Road a distance of 263.29 feet to the true point of beginning of this description; thence North 165.23 feet; thence West 549.60 feet to the Northeasterly line of said Railroad right of way; thence following the boundary line of said Railroad right of way to its intersection with the North line of the South half of the Southwest Quarter of Section 16; thence East along the North line of the Northeast corner of the Southeast quarter of the Southwest Quarter; thence South along the East line of said Southeast Quarter of the Southwest Quarter 277.90 feet, more or less, to its intersection with the Northwesterly line of the Depot Road; thence Southwesterly along the Northwesterly line of the Depot Road to the point of beginning. EXCEPTING therefrom an additional portion conveyed to the Great Northern Railway by deed recorded in Volume 105 of Deeds, page 209, Records of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Amerititle the 11th day
of February A.D., 19 98 at 9:14 o'clock A. M. and duly recorded in Vol. M98
of Mortgages on Page 4403

FEE \$75.00

By Bernetha G. Leisch, County Clerk
Kathleen Ross