

DO NOT SIGN THIS INDENTURE BEFORE YOU READ IT. THE PROMISSORY NOTE SECURED BY THIS INDENTURE AUTHORIZES THE MORTGAGEE TO REFUSE TO ACCEPT REPAYMENT OF THE PROMISSORY NOTE PRIOR TO THE DATE PROVIDED FOR REPAYMENT IN THE PROMISSORY NOTE.

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter called "Indenture"), Made this 7th day of September, 1983, by RAYMOND P. ROHRBACKER and LINDA M. ROHRBACKER (hereinafter called "Mortgagor"), to JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a corporation duly established and existing under the laws of the Commonwealth of Massachusetts, with its principal office at John Hancock Place, in Boston, Suffolk County, Massachusetts (hereinafter called "Mortgagee");

W I T N E S S E T H:

Mortgagor, for valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey, mortgage, and confirm unto Mortgagee, its successors or assigns, "the real property situate in the County of Klamath, State of Oregon, described in Exhibit "A". In addition, Mortgagor hereby declares that the irrigation improvements described in Exhibit "A" are a fixture of the mortgaged real property, hereby grants to Mortgagee a security interest in said irrigation improvements pursuant to the Uniform Commercial Code of the State of Oregon as a fixture filing, and declares, to the extent the context hereof requires, that said irrigation improvements are herein called "collateral".

TOGETHER WITH:

1. The tenements, hereditaments, and appurtenances now or hereafter used or usable in connection with the security;
2. All leases, permits, licenses, privileges, rights-of-way, and easements, written or otherwise, now held by Mortgagor, or hereafter issued, extended or renewed;
3. All improvements now on or hereafter placed upon said security during the term of this mortgage, including all fixtures, now or hereafter a part of, or used in connection with, said improvements.
4. All rights to the use of water for irrigation of the security and for domestic use thereon to which the security is now or may hereafter become entitled, or which may hereafter be used on the security, however the same may be evidenced, together with all shares of stock or shares of water, if any, in any ditch or irrigation company which in any manner entitles the legal or equitable owner of the security to water for irrigation or domestic purposes upon the security.
5. All damages, royalties and revenues of every kind, nature and description whatsoever that Mortgagor may be entitled to receive from any person, company or corporation owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the security.
6. All additions, attachments, and accessions to the security and all products and proceeds thereof.
7. All moneys payable to the present and subsequent owners of the real property by the owners of any mineral interests or rights in the real property as compensation for disturbing the surface or interfering with the use of the real property.

Further, to the extent the context hereof requires, the real property, the collateral, and the foregoing, are herein collectively called "security".

THIS INDENTURE IS GIVEN TO SECURE THE FOLLOWING:

1. Performance by Mortgagor of the covenants and agreements of Mortgagor contained in this Indenture;
2. The payment of that certain promissory note of even date in the principal sum of \$230,000.00, with interest as provided in said note, payable to the order of Mortgagee; and,

3. Payment of any sum or sums advanced, incurred, or paid by Mortgagee, to, for, or on account of Mortgagor as provided in this Indenture.

TO HAVE AND TO HOLD the said security to the said Mortgagee, its successors or assigns, until the obligations secured by this Indenture have been fully discharged.

MORTGAGOR COVENANTS AND AGREES:

1. Warranty of Title: That Mortgagor is lawfully seized of the above described real property in fee simple, has good right and lawful authority to mortgage the same, and that said real property is free from all encumbrances, except as set forth in Exhibit "A", and that Mortgagor will warrant and defend the same forever against the lawful claims and demands of all persons whomsoever, and this covenant shall not be extinguished by any foreclosure of this Indenture, but shall run with the land. Mortgagor is the owner of the collateral free from any adverse lien, security interest, or encumbrance.

2. Waiver of Homestead and Exemption: That Mortgagor does hereby release and waive all rights under and by virtue of any homestead or exemption laws now in force, or which may hereafter become law.

3. Perfection of Security Interest In Collateral: To execute and file financing statements and do whatever may be necessary under applicable law to perfect and continue Mortgagee's security interest in the collateral at Mortgagor's expense.

4. Further Assurances: Mortgagor agrees that upon request of Mortgagee from time to time it will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Indenture.

5. Inspection by Mortgagee: Mortgagee is authorized by itself, its agents or workmen, to enter at any time upon the real property, and the improvements thereon, for the purpose of inspecting the same, and for the purpose of performing any of the acts authorized in this Indenture, and for the purpose of ascertaining that the Mortgagor is in compliance with various loan requirements and restrictions.

6. Protection of Security: To keep the security, including, but not limited to, buildings, structures, fixtures, permanent plantings, trees, and orchards, if any be in existence on the date hereof, in good condition and repair, not to remove or demolish, nor permit the removal or demolition of any thereof; to comply with all laws, rules and regulations made by any duly constituted authority applicable to the security; to keep the security free from liens of every kind including, without limiting the generality of the foregoing, free of any further mortgage, pledge, encumbrance, security agreement, or hypothecation on or of the security, or any part thereof; not to commit nor permit any waste to or on the security; not to permit nor to commit anything which shall impair the security created by this Indenture; to comply with all requirements of all federal, state and local pollution, zoning, environmental, and water laws and regulations applicable to, or pertaining to the security, and to the business and operations of the Mortgagor, and to continue to maintain compliance with these present and future laws and regulations (including, without limiting the generality of the foregoing, all of the provisions of the Reclamation Project Act, and all amendments thereto, and all contracts, rules, and regulations of the Klamath Irrigation District as representative of the landowners in all contracts with the United States Department of the Interior, Bureau of Reclamation).

7. Prompt Performance and Payment: To perform all obligations and pay all sums of money (both principal and interest at the rates specified in the note or in this Indenture) secured hereby promptly when due.

8. Payment of Taxes and Assessments: To pay regularly and seasonably, and before the same shall become delinquent, all taxes, assessments, and charges of whatever nature (including additional charges by reason of change of use) levied and assessed against the mortgaged property and/or collateral, or any part thereof, except for taxes not delinquent or being contested in good faith. Without limiting the

generality of the foregoing, Mortgagor shall pay regularly and seasonably, and before the same shall become delinquent, all charges and assessments of Klamath Irrigation District.

9. Insurance: To provide and maintain insurance covering all collateral, and/or the buildings, structures and improvements now situate, or which hereafter may be erected or placed upon, the real property against loss or damage by fire and such other hazards as Mortgagee may from time to time require, all such insurance to be in forms, in companies and in sums (not less than sufficient to avoid any claim on the part of the insurers for co-insurance) satisfactory to Mortgagee; all insurance policies to be held by and first payable in case of loss to Mortgagee; and at least 15 days before the expiration of each such policy to deliver to Mortgagee a new and sufficient policy to take the place of the one so expiring; it being agreed that in the event of a loss the amount collected under any policy of insurance on said property may, at the option of Mortgagee, be applied by Mortgagee upon any indebtedness and/or obligation secured hereby and in such order as Mortgagee may determine, or said amount or any portion thereof may, at the option of Mortgagee, either be used in replacing or restoring the improvements partially or totally destroyed to a condition satisfactory to Mortgagee, or be released to Mortgagor, in either of which events Mortgagee shall not be obligated to see to the proper application thereof; nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby. Such application, use and/or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Mortgagor hereby irrevocably appoints Mortgagee attorney in fact of Mortgagor to assign each such policy in the event of the foreclosure of this Indenture or other transfer of the title to the security in extinguishment, in whole or in part, of the debt secured hereby.

10. Reserve: Mortgagor will pay to Mortgagee, to the extent requested by Mortgagee, such amounts as Mortgagee from time to time estimates as necessary to create and maintain a reserve fund from which to pay before the same become due, all taxes, assessments, liens and charges on or against the security, and premiums for insurance to be furnished by Mortgagor. Payments from the reserve fund for the purposes may be made by Mortgagee at its discretion though subsequent owners of the property described herein may benefit thereby. In the event of default under the terms of this Indenture, any part or all of said reserve fund may be applied to any part of the indebtedness hereby secured and in refunding any part of the reserve fund, Mortgagee may deal with whomever is represented to be the owner of the property at that time. No interest, income or profits accruing from the reserve fund, or to Mortgagee, shall be paid to or inure to the benefit of Mortgagor.

11. Condemnation: All money and awards payable as damages and/or compensation for the taking of title to or possession of, or for damage to any portion of the real property and/or collateral by reason of any condemnation, eminent domain, change of grade, or other proceeding shall, at the option of the Mortgagee, be paid to the Mortgagee, and such moneys and awards are hereby assigned to Mortgagee, and judgment therefor shall be entered in favor of Mortgagee, and, when paid, shall be used, at its option, toward the payment of any indebtedness or obligation secured hereby in such order or manner as Mortgagee may desire or determine, or shall be used at its option, for payment of taxes, assessments, repairs or other items for the payment of which this Indenture is given as security, whether the same be then due or not, and in such order or manner as Mortgagee may determine, and any amount not so used shall be released to Mortgagor. Such application or release shall not cure or waive any default or foreclosure proceedings.

12. Surface Damage: To the extent Mortgagor should be entitled to surface damage, Mortgagee, at its option, is authorized and empowered to collect and receive such moneys and to give receipts and acquittances therefor, and may, at the election of Mortgagee, use the same or any part thereof in any one or more of the following ways: (a) apply it upon the indebtedness secured hereby, whether the debt is matured or unmatured, in such order or manner as Mortgagee may require or determine; (b) use it to fulfill any of the covenants contained herein as the Mortgagee may determine; (c) use it to replace or restore the mortgaged property to a condition satisfactory to the Mortgagee, or (d) release it to Mortgagor, and Mortgagor will make, execute and deliver any and all assignments and instruments sufficient to assign these moneys to Mortgagee free, clear and discharged of all encumbrances of any kind or nature whatsoever.

13. Expenses Incurred by Mortgagee to Protect Security: If Mortgagor fails to pay or discharge any taxes, assessments, liens, encumbrances, or charges to be paid by Mortgagor as provided in this Indenture, Mortgagee, at his option and without waiver of default or breach of Mortgagor, and without being obligated to do so, may pay or discharge all or any part thereof. Mortgagee may appear in or defend any action or proceeding at law, in equity (including, without limiting the generality of the foregoing, any condemnation proceeding), or in bankruptcy, affecting in any way the security hereof, and, in such event, Mortgagee shall be allowed and paid, and Mortgagor hereby agrees to pay, all costs, charges and expenses, including costs of evidence of title or validity and priority of the security created by this Indenture and reasonable attorney fees to be awarded by the court, at trial or on appeal, incurred by Mortgagee in any such action or proceeding in which Mortgagee may appear. All sums so paid or advanced or incurred by Mortgagee shall become repayable by Mortgagor, together with interest at the rate of 25% per annum, upon demand.

14. Sale by Mortgagor of Real Property: Should Mortgagor sell or agree to sell, convey or agree to convey, lease or agree to lease, transfer or dispose of or agree to transfer or dispose of, or further encumber the real property, or any part thereof, in any way, without the written consent of Mortgagee being first had and obtained, or if it is accomplished by operation of law, then Mortgagee shall have the right, at its option, to declare all sums secured hereby immediately due and payable.

15. Release: Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Indenture, upon any property not then or theretofore released as security, for the full amount of all unpaid obligations, Mortgagee may from time to time and without notice release any person so liable, extend the maturity or alter any of the terms of such obligation, or grant other indulgences, release or cause to be released at any time at Mortgagee's option any parcel or portion or all of the real property and/or collateral, take or release any other or additional security for any obligations herein mentioned, and/or make composition or other arrangements with debtors in relation thereto. If the Mortgagee at any time holds any additional security for any obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same at its option, either before or concurrently therewith or after a sale is made hereunder.

16. Continuing Lien: The Mortgagee shall be subrogated for further security to the lien, although released of record, of all encumbrances paid out of the proceeds of the loan secured by this Indenture. This Indenture is a continuing lien to secure payment of the note and the performance of all the other obligations imposed hereby and hereafter arising.

17. Advances: Mortgagor, without the prior written consent of Mortgagee, will not make any advances, loans or guarantees, or become obligated for the liabilities of any other person, firm or corporation, except for the endorsements of negotiable instruments received in the normal course of the business of Mortgagor.

18. Time Is Material and of The Essence: Time is material and of the essence hereof; in the event of default of the payment of the indebtedness evidenced by the note referred to in this Indenture, or any installment of the principal sum or interest thereon, or any part thereof, or in the repayment of any disbursement authorized by the terms of this Indenture and actually made by Mortgagee, or in the repayment of any expense or obligation payable by the Mortgagor but paid by the Mortgagee, as provided in this Indenture, or in the event of the breach of any of the covenants or agreements by Mortgagor, Mortgagee may at once proceed to foreclose this Indenture for the amount due, or in the case of default as aforesaid, or in the event of the violation, nonperformance or breach of any of the covenants, conditions, agreements, or warranties herein or in the promissory note secured by this Indenture, or in case of the actual or threatened demolition or removal of any building, structure, improvement, permanent planting, tree or orchards on or to be erected on the mortgaged property and/or collateral by Mortgagor without the written permission of Mortgagee, the entire principal sum of the promissory note hereby secured and the whole amount of all indebtedness owing by or chargeable to Mortgagor under the provisions of this Indenture or intended to be secured hereby shall, at the election of Mortgagee, become immediately due and payable without notice although the time expressed in said note for

the payment thereof shall not have arrived and suit may immediately be brought without notice to Mortgagor, and a decree be had to sell the mortgaged property and/or collateral, or any part thereof, in the manner prescribed by law, and out of the moneys arising from said sale to repay said indebtedness, including both principal and interest, together with the costs and charges of making such sale and suit for foreclosure and also the amounts of all sums advanced or paid by Mortgagee to or for the account of Mortgagor, with interest thereon as herein provided, including such payment of liens, taxes, or other encumbrances as may have been made by Mortgagee by reason of provisions herein given, and inclusive of interest thereon, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to Mortgagor. In addition to, and without limitation of the generality of the foregoing, Mortgagee shall have, in the event of any default of Mortgagor, all the rights and remedies of a secured party under the Uniform Commercial Code -- Secured Transactions, or other applicable law, with reference to the collateral, to enforce payment of all obligations secured by this Indenture. Nothing herein shall be construed as preventing Mortgagee from a judgment for any deficiency and Mortgagor expressly agrees that Mortgagee is entitled to a judgment for a deficiency. All Mortgagee's rights and remedies, regardless of how evidenced, shall be cumulative and may be exercised singularly or concurrently at the sole discretion and option of Mortgagee.

19. Receivership: To the extent allowed by Oregon law, in the event any suit is commenced to foreclose this Indenture, the court having jurisdiction of the case may, upon motion by Mortgagee, appoint a receiver to collect the rents and profits arising out of the mortgaged property and/or collateral and to take possession, management and control of the same during pendency of such foreclosure proceeding or until such time as payment of the obligations hereby secured is made, and apply said rents and profits to the payment of the amounts due hereunder, after first deducting all proper charges and expenses attending the execution of said receivership.

20. Rents and Profits: To the extent allowed by Oregon law, all rents, issues and profits of the real property are hereby assigned to Mortgagee as further security for the payment of the indebtedness and performance of the obligations, covenants, promises and agreements secured hereby. To the extent allowed by Oregon law, if default be made in payment of any indebtedness secured hereby or in performance of any of Mortgagor's agreements herein contained, Mortgagee shall be entitled at any time without notice, in its sole discretion, either by its agents, attorneys, employees, or by a receiver to be appointed by a Court, and without regard to the adequacy of any security for the indebtedness hereby secured, to enter upon and take possession of the security or any part thereof, and to do and perform any act that Mortgagee may deem necessary or proper to conserve the value thereof, and to collect and receive all rents, issues and profits thereof, including those past due and unpaid as well as those accruing thereunder. To the extent allowed by Oregon law, Mortgagee may also take possession of, and use any and all personal property contained in the security and used by Mortgagor in the operation, rental or leasing of the security, or any part thereof. To the extent allowed by Oregon law, Mortgagee may, at its option, apply all such rents, issues and profits collected or received by it in the manner heretofore specified in respect of insurance as provided in a preceding paragraph styled "Insurance". To the extent allowed by Oregon law, the expense (including receivers' fees, if any, and compensation to any agent appointed by Mortgagee, and counsel fees and costs and disbursements) incurred in taking possession and effecting such collection, shall be deemed a portion of the expense of this mortgage secured hereby. Neither the entering upon and taking possession of the security nor the collection of such rents, issues and profits and the application or release thereof as aforesaid, shall cure or waive any default. To the extent allowed by Oregon law, the rents, issues and profits may be applied upon any indebtedness and/or obligation secured hereby in such order or manner as Mortgagee may desire or determine.

21. Costs of Title in the Event of Foreclosure: Upon the commencement of any suit to collect the indebtedness or disbursements, secured hereby, or any part hereof, or to enforce any provision of this Indenture, by foreclosure or otherwise, there shall become due, and Mortgagor agrees to pay to Mortgagee, in addition to all statutory costs and disbursements, any amount Mortgagee may incur or pay for any title report, title search, insurance of title, or other evidence of title subsequent to the date of this Indenture on any of the mortgaged property and/or collateral described in this Indenture and this Indenture shall be security for the payment thereof.

22. Attorney Fees to Prevailing Party: In the event any suit or action is instituted to collect the indebtedness or disbursements secured hereby, or any part thereof, or to enforce any provision of this Indenture by foreclosure, or otherwise, the prevailing party, at trial or on appeal, shall be entitled to such reasonable attorney fees as shall be fixed by the court having jurisdiction of the case, in addition to statutory costs and disbursements.

23. Waiver: Acceptance by Mortgagee of any sum in payment or part payment, of any indebtedness secured hereby, after the same is due or after foreclosure proceedings are filed, shall not constitute a waiver of the right to require prompt payment when due, of all other sums so secured, nor shall such acceptance cure or waive any remaining default or invalidate any foreclosure proceedings for any such remaining default, or prejudice any of the rights of Mortgagee under this Indenture. The failure of Mortgagee to insist upon the strict performance of any of the covenants or agreements of Mortgagor contained in this Indenture, or the delay by Mortgagee in the enforcement of any of its remedies herein upon any default of the Mortgagor, shall never constitute a waiver of any requirement or obligation of Mortgagor or right or remedy of Mortgagee contained in or based upon these covenants or agreements.

24. Binding Effect of Indenture: This Indenture contains a full understanding of Mortgagor and Mortgagee with respect to the provisions set forth herein and no modification of this Indenture shall be given effect unless the same is in writing, subscribed by Mortgagor and Mortgagee (or their respective successor in interest) and made of record in the same manner as this Indenture is made of record. The liabilities of Mortgagor are joint and several.

25. Notices: Any notice or notices required to be given by either Mortgagor to Mortgagee or Mortgagee to Mortgagor pursuant to any provision of this Indenture shall be in writing, and shall be deemed given when the same is deposited in the United States mail as registered mail, postage prepaid, addressed to the party to whom notice is to be given at the last address of such party known by the party giving such notice. In lieu of mailing such notice, such notice may be delivered in person to the party to whom notice is to be given and execution by the person to whom notice is to be given of a receipt of such notice shall be conclusive evidence of delivery of such notice.

26. Binding Effect and Construction of Indenture: This Indenture shall bind and inure to the benefit of, as the circumstances may require, the parties hereto, and their respective heirs, executors, administrators, successors, and assigns. In construing this Indenture, the singular shall include both the singular and the plural and all words used in any gender shall extend to and include all genders. The headings contained in this Indenture are for convenience only and are not to be construed as part of this Indenture. To the extent that any exhibit is attached to this Indenture, the same is hereby incorporated into this Indenture as though fully set forth at the place in this Indenture at which reference to said exhibit is made.

27. Severability: If any provisions hereof should be held unenforceable or void, the provision is separable from the remaining provisions and shall not affect the validity of this Indenture.

28. Controlling Law: This Indenture shall be construed under the laws of the State of Oregon regardless of where executed.

29. Fixture Filing: This Indenture shall, in addition to being a mortgage and security agreement, upon recordation, constitute a fixture and mineral financing statement filing pursuant to Chapter 79 of Oregon Revised Statutes.

RAYMOND P. ROHRBACKER, Mortgagor

LINDA M. ROHRBACKER, Mortgagee

STATE OF OREGON, County of Klamath ss:

Personally before me appeared the above named RAYMOND P. ROHRBACKER and LINDA M. ROHRBACKER and acknowledged the foregoing instrument to be their voluntary act and deed.

NOTARY PUBLIC FOR OREGON  
My Commission Expires:

(SEAL)

Real Property

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

The N½ of NW¼ of Section 21, Township 41 South, Range 12 East of the Willamette Meridian, lying South and West of the Great Northern Railroad right of way.

## SUBJECT TO:

1. Acreage and use limitations under provisions of United States Statutes and regulations issued thereunder.

2. Liens and assessments of Klamath Project and Klamath Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.

3. Right of Way of U.S. Government ditch as disclosed by Deed from John B. McCulley, et ux, to Geo. W. McCollum, et al, dated February 18, 1943, and recorded February 19, 1943, in Deed Volume 153, Page 155, Records of Klamath County, Oregon.

Irrigation Improvements

All irrigation wells, irrigation pumps, irrigation motors, irrigation equipment and all appurtenances thereto, together with all additions and accessions thereto and replacements and substitutions therefor, now or hereafter located on the above-described real property in Klamath County, Oregon. In addition, without limiting the generality of the foregoing, the following specific irrigation improvements:

1. GENERAL ELECTRIC Motor, 50 HP, Model 5K32AYK166, Serial No. CKG 133018 with Cornell Pump, Model 5WB50-2, Serial No. 16441
2. 1600' 6-inch Mainline
3. Two Wheel Lines, 6-ft. wheels, 1200' long.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record . . .

this 7th day of September A. D. 19 83 at 4:36 o'clock P. M., and  
duly recorded in Vol. M83, of Mortgages on page 15246.

Fee \$28.00 By Evelyn Biehn, County Clerk