

MORTGAGE

THIS MORTGAGE is made this 7th day of November, 1988, between Biaggi-Venable partnership, a partnership consisting of Thomas M. Venable, Patricia A. Venable, Charles W. Biaggi and Peggy J. Biaggi; Thomas M. Venable and Patricia A. Venable, husband and wife; and Charles W. Biaggi and Peggy J. Biaggi, husband and wife, whose address is Box 22, Star Route, Dairy, Oregon 97625 as Mortgagor; and Senneff, Bernheim, Emery & Kelly, P.C., whose address is P.O. Box 3729, 50 Old Courthouse Square, Santa Rosa, California, 95402, as Mortgagee.

Mortgagor irrevocably grants and conveys to Mortgagee that certain property, in Klamath County, Oregon, more particularly described as

Township 38 South, Range 11 1/2 East of the Willamette Meridian, Section 33: N 1/2 NE 1/4, NE 1/4 NW 1/4 LESS 2 acres for railroad described in Deed Volume 47 page 594, Records of Klamath County, Oregon.

together (a) with all appurtenances and easements thereto, and (b) all existing or subsequently erected or affixed improvements or fixtures thereon, all of which is collectively referred to as the "Property."

Mortgagor is indebted to Mortgagee in the principal sum of EIGHTY-EIGHT THOUSAND FOUR HUNDRED EIGHTY-SIX AND 66/100 DOLLARS (\$88,486.66) which is repayable with interest according to the terms of a Promissory Note (herein the "Note") dated , 1988, under which the final payment of principal is due on or before September 15, 1993.

The term "Indebtedness" as used in this Mortgage shall mean (a) the principal payable under the Note, (b) ~~any future amounts for all additional services hereafter provided to or for the Mortgagor,~~ (c) any sums paid or advanced by Mortgagee as permitted under this Mortgage and (d) any extensions, replacements or renewals of the Note. RJB TML
CUB JRO

This Mortgage is given to secure payment of the Indebtedness and performance of all obligations of Mortgagor under this Mortgage, and is given and accepted on the following terms:

1. POSSESSION AND MAINTENANCE OF THE PROPERTY.

(a) Unless in default, Mortgagor shall remain in possession and control of the Property and shall be free to operate and manage the Property and receive the proceeds of operation. Mortgagor shall maintain the Property in good condition at all times, and shall promptly make all necessary repairs, replacements and renewals so that the value of the Property shall be maintained, and shall not commit or permit any

waste on the Property. Mortgagor shall not demolish or remove any improvements from the Property without the written consent of Mortgagee. Mortgagor shall comply with all laws, ordinances, regulations and private restrictions affecting the Property.

(b) If the Property is used as a farm or orchard, Mortgagor shall cultivate or otherwise operate the Property according to good husbandry. To the extent that the Property constitutes commercial property, Mortgagor shall operate the Property in such manner as to prevent deterioration of the land and improvements, including fences, except for reasonable wear and tear from proper use.

(c) Upon notice to Mortgagor, Mortgagee may make or cause to be made reasonable entries upon the Property for the purpose of inspecting it.

2. TAXES AND LIENS.

(a) Mortgagor shall pay, before they become delinquent, all taxes and assessments levied against or on account of the Property, and shall pay, as they become due, all claims for work done, services rendered, or material furnished to the Property, and shall, on written request of the Mortgagee, promptly furnish Mortgagee with receipts therefor. Mortgagor shall maintain the Property free of any liens having priority over or equal to the interest of Mortgagee under this Mortgage, except for the lien of taxes and assessments not delinquent.

~~(b) During the term hereof, Mortgagee may employ a tax reporting service under a contract which requires such service to report to Mortgagee the status of accrued taxes and payments made with respect thereto. Mortgagor shall pay the cost of such contract upon request from Mortgagee.~~ DBTm
CUB per

(c) The assessor or tax collector of the county in which the Property is located is authorized to deliver to Mortgagee a written statement of the property taxes assessed or owing at any time and any other charges or assessments collected by or through the office of the tax collector.

3. INSURANCE AND RELATED MATTERS.

(a) Mortgagor shall carry, at its cost, casualty insurance on the Property against fire, additional risks covered by a standard endorsement for extended coverage, and such other risks as may be specified by Mortgagee, in an amount not less than the full replacement value of the Property. All proceeds of such insurance shall be payable directly to Mortgagee.

(b) Mortgagor shall also carry, at its cost, liability insurance in an amount not less than \$1,000,000, which insurance shall also insure performance of Mortgagor's indemnity obligations

hereunder. Mortgagee shall be an additional named insured on such liability policy.

(c) Each policy of insurance shall contain an endorsement that it will not be altered or cancelled without thirty (30) days' prior written notice to the Mortgagee. Each policy shall be in such form and issued by such insurance company as is reasonably satisfactory to Mortgagee. All policies of insurance on the Property shall (i) contain a full waiver of subrogation in favor of Mortgagee, and (ii) bear a standard mortgagee's endorsement, in form satisfactory to Mortgagee. Such policies or certificates of insurance in respect thereof shall be deposited with Mortgagee so long as any Indebtedness remains unpaid hereunder.

(d) In the event of a casualty loss, Mortgagor shall immediately notify Mortgagee, who may make a proof of loss if it is not made promptly by Mortgagor. Proceeds shall be paid directly to Mortgagee who may compromise with any insurance company and make a final settlement which shall be binding upon Mortgagor. Mortgagee may, at its election, apply the proceeds to the reduction of the indebtedness or the restoration or repair of the Property. Any reductions of the indebtedness arising from such application shall not extend or postpone the due date of the monthly installments required pursuant to the Note or change the amount of such installments. *7 P.D. T.M. CUB P.D.*

(e) At least ~~30~~ *7* days prior to the expiration of any policy, a satisfactory renewal or substitute policy shall be secured by Mortgagor.

(f) In the event Mortgagee acquires the Property pursuant to the terms hereof, all right, title and interest of Mortgagor in and to any insurance policies, unearned premium thereon, and the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Mortgagee to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

(g) Mortgagor hereby waives and releases Mortgagee from any claim or liability (including attorneys fees) related to the Property and agrees to defend, indemnify and hold Mortgagee harmless from any claim, loss, damage, cost or expense (including attorneys fees) arising out of or related to the use, occupation, ownership and/or operation of the Property.

4. EXPENDITURES BY MORTGAGEE.

If Mortgagor fails to comply with any provision of this Mortgage, Mortgagee may at its option take the required action and any amount that it expends in so doing shall be added to the Indebtedness. Amounts so added shall be payable on demand with interest at the rate of ten percent per annum from the date of expenditure. The rights provided for in this paragraph shall be

in addition to any other rights or any remedies to which Mortgagee may be entitled on account of the default, and Mortgagee shall not by taking the required action cure the default so as to bar it from any remedy that it otherwise would have had.

5. EXTENSION OR RENEWAL OF INDEBTEDNESS.

Mortgagee may, in its sole discretion, extend or renew the Note, payment of which indebtedness is secured hereby, on such terms and conditions as Mortgagee may, in its sole discretion, determine. In the event of any such extension or renewal, the indebtedness evidenced by such extended or renewed Note shall be secured by this Mortgage. The priority of this Mortgage shall not be affected by future advances, renegotiation or expenditures provided for in Paragraph 4 above, any increase in the Indebtedness as a result of deferment of all or a portion of interest and the addition of such interest to principal, and/or the execution of new agreements which reflect such changes.

6. WARRANTY: DEFENSE OF TITLE.

Mortgagor warrants that it holds title to the Property in fee simple free of all encumbrances other than that certain mortgage dated July 13, 1982, recorded in the Klamath County deed records on July 13, 1982 as Vol. M82 page 8883 wherein Biaggi-Venable is grantor and Porter Willis and Averyel Willis are beneficiaries, liens and assessments of Klamath Project and Horsefly Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith and rights of way of record and those apparent on the land. Subject to the above exceptions, Mortgagor warrants and will forever defend the title against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Mortgagor's title or the interest of Mortgagee under this Mortgage, Mortgagor shall defend the action at its expense.

7. CO-MORTGAGE.

This Mortgage and that certain mortgage granted by Mortgagor to Schwabe, Williamson & Wyatt (hereinafter the "Schwabe Mortgage") shall be deemed simultaneously recorded and have equal priority status. Schwabe and secured party have agreed and the Bankruptcy Court has ordered that they shall have equivalent rights to the Property and shall share them on a pro rata basis. In the event the Property is sold, Debtor shall make a prepayment on its promissory note to Secured Party to the extent that proceeds have not been paid to Porter and Averyel Willis in connection with such sale. Any proceeds remaining shall be shared with Schwabe in the manner provided above.

8. CONDEMNATION.

If all or any part of the Property is condemned, Mortgagee may at its election apply all or any portion of the net

proceeds of the award to the Indebtedness, and the proceeds of any award or claim for damages, direct or consequential, are hereby assigned to and shall be paid to Mortgagee for such purpose. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Mortgagee in connection with the condemnation. If proceedings in condemnation are filed covering all or any part of the Property, Mortgagor shall promptly notify Mortgagee thereof and take such steps as may be necessary to defend the action and obtain the highest legal award therefor. Unless Mortgagor and Mortgagee shall otherwise agree in writing, any application of proceeds or damages to principal pursuant to this Paragraph shall not extend or postpone the due date of the monthly installments or change the amount thereof.

9. IMPOSITION OF TAX BY STATE.

If any state tax upon this Mortgage or the Note or upon Mortgagee by reason of the existence of this Mortgage or the Note is enacted subsequent to the date hereof, this shall have the same effect as a default, and Mortgagee may exercise any or all of the remedies available to it in the event of a default unless the following conditions are met:

(a) Mortgagor may lawfully pay the tax or charge imposed by the state tax; and

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

10. TRANSFER BY MORTGAGOR.

Mortgagor shall not transfer, assign, sell, convey, mortgage or pledge all or any portion of the Property or Mortgagor's interest therein whether or not the Transferee assumes or agrees to pay the Indebtedness. Any transfer by Mortgagor shall not relieve Mortgagor of liability for payment of the Indebtedness. Following a transfer, Mortgagee may agree to any extension of time for payment or modification of the terms of this Mortgage or the Note or waive any right or remedy under this Mortgage or the Note without relieving Mortgagor from liability. Mortgagor waives presentment, notice of dishonor and protest with respect to the Indebtedness.

11. RECONVEYANCE ON FULL PERFORMANCE:

If Mortgagor pays all of the Indebtedness when due and otherwise performs all of the obligations of Mortgagor under this instrument and the Note, Mortgagee shall execute and deliver to Mortgagor a satisfaction hereof.

12. DEFAULT.

The following shall constitute events of default:

- (a) Failure of Mortgagor to pay any portion of the Indebtedness when it is due.
- (b) Failure of Mortgagor within the time required by this Mortgage to make any payment for taxes, insurance, or any other payment necessary to prevent the filing of or to secure the discharge of any lien.
- (c) Mortgagor becomes insolvent, files a petition in bankruptcy or becomes the subject of any involuntary petition in bankruptcy, the making of any assignment for the benefit of Mortgagor's creditors, or the appointment of a receiver with respect to all or a portion of Mortgagor's property.
- (d) Mortgagor violates the provisions of Section 10 above.
- (e) Failure of Mortgagor to perform any other obligation under this Mortgage within 20 days after receipt of written notice from Mortgagee specifying the failure.
- (f) Mortgagor is in default under the terms of the Schwabe Mortgage.

13. RIGHTS AND REMEDIES ON DEFAULT.

(a) Upon the occurrence of any event of default and at any time thereafter, Mortgagee may exercise any one or more of the following rights and remedies:

- (1) The right at its option by notice to Mortgagor to declare the entire Indebtedness immediately due and payable.
- (2) With respect to all or any part of the Property that constitutes realty, the right to foreclose this Mortgage in accordance with applicable law.
- (3) The right in connection with any legal proceedings to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property and to operate the Property preceding foreclosure or sale and apply the proceeds, over and above cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Mortgagee's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the Indebtedness.

(4) In the event Mortgagor remains in possession of the Property after the Property is sold as provided above or Mortgagee otherwise becomes entitled to a possession of the Property upon default of Mortgagor, Mortgagor shall become a tenant at will of Mortgagee or the purchaser of the Property and shall pay while in possession a reasonable rental for use of the Property.

(5) Any other right or remedy provided at law, in equity or in this Mortgage or the Note.

(b) In exercising its rights and remedies Mortgagee shall be free to sell all or any part of the Property together or separately or to sell certain portions of the Property and refrain from selling other portions. Mortgagor waives any right to require marshalling of assets. Mortgagee shall be entitled to bid at any sale on all or any portion of the Property.

(c) A waiver by either party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Mortgagee to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform shall not affect Mortgagee's right to declare a default and exercise its remedies hereunder.

(d) In the event suit or action is instituted to enforce any of the terms of this Mortgage, Mortgagee shall be entitled to recover from Mortgagor such sum as the court may adjudge reasonable as attorneys' fees at and in preparation for trial and any appeal. All reasonable expenses incurred by Mortgagee that are necessary at any time in Mortgagee's opinion for the protection of its interest or the enforcement of its rights, including without limitation, the cost of searching records, obtaining title reports, surveyors' reports, attorneys' opinions or title insurance, whether or not any court action is involved, shall become a part of the Indebtedness payable on demand.

14. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; MORTGAGEE IN POSSESSION.

As additional security hereunder, Mortgagor hereby assigns to Mortgagee the rents of the Property, provided that Mortgagor shall, prior to default, have the right to collect and retain such rents as they become due and payable. Upon the occurrence of an event of default, Mortgagee, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Mortgagee or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums

on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. Mortgagee and the receiver shall be liable to account only for those rents actually received.

15. NOTICE.

Any notice under this Mortgage shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the address stated in this Mortgage. Any party may change the address for notices by written notice to the other parties.

16. DISCLAIMER.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

17. MISCELLANEOUS PROVISIONS.

(a) Subject to the limitations set forth in Section 10 above, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns.

(b) In construing this Mortgage, the term Mortgage shall encompass the term security agreement when the instrument is being construed with respect to any personal property, and the singular shall include the plural and masculine shall include feminine, when the context requires.

(c) By execution hereof, Mortgagor acknowledges receipt of a copy of the Note and this Mortgage.

(d) Time is of the essence to this Mortgage and each provision hereof.

IN WITNESS WHEREOF, Mortgagor hereby executes this Mortgage the date first hereinabove written.

BIAGGI-VENABLE

By: Thomas M. Venable
Thomas M. Venable, Partner

Thomas M. Venable
Thomas M. Venable

By: Patricia A. Venable
Patricia A. Venable, Partner

Patricia A. Venable
Patricia A. Venable

By: Charles W. Biaggi
Charles W. Biaggi, Partner

Charles W. Biaggi
Charles W. Biaggi

By: Peggy J. Biaggi
Peggy J. Biaggi, Partner

Peggy J. Biaggi
Peggy J. Biaggi

STATE OF OREGON

County of Klamath } SS.

On this 7 day of November, 1988, before me, the undersigned a Notary Public for the State of Oregon, personally appeared THOMAS M. VENABLE, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as his free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year first above written.

Maureen E. Patterson
Notary Public for the State of Oregon
My commission expires 1-21-89

STATE OF OREGON

County of Klamath

SS.

On this 7 day of November, 1988, before me, the undersigned a Notary Public for the State of Oregon, personally appeared PATRICIA A. VENABLE, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same as her free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Marilyn E. Patterson
Notary Public for the State of Oregon
My commission expires 1-21-89

STATE OF OREGON

County of Klamath

SS.

On this 2 day of November, 1988, before me, the undersigned a Notary Public for the State of Oregon, personally appeared CHARLES W. BIAGGI known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as his free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Marilyn E. Patterson
Notary Public for the State of Oregon
My commission expires 1-21-89

STATE OF OREGON

County of Klamath

SS.

On this 2 day of November, 1988, before me, the undersigned a Notary Public for the State of Oregon, personally appeared PEGGY J. BIAGGI known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same as her free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Marilyn E. Patterson
Notary Public for the State of Oregon
My commission expires 1-21-89

10 - MORTGAGE

Return: Senneff, Bernheim, Emery & Kelly
P.O. Box 3729
Santa Rosa, Ca. 95402

STATE OF OREGON: COUNTY OF KLAMATH: SS.

Filed for record at request of Senneff, Bernheim, Emery, Kelly
of Dec. A.D., 1988 at 2:16 o'clock P.M., and duly recorded in Vol. M88
of Mortgages on Page 20518
Evelyn Biehn County Clerk
By Patricia M. M. M. M. M.

FEE \$53.00