

98902

Vol. m89 Page 5995

PROMISSORY NOTE

Klamath Falls, Oregon

April 6, 1989

\$93,000.00

For value received, the undersigned promises to pay to the order of STANLEY C. MASTEN and PATRICIA A. MASTEN, husband and wife, the sum of Ninety Three Thousand Dollars with interest thereon at the rate of ten percent (10%) per annum until paid, as follows:

Annual payments of \$15,135.32, including interest, beginning April 6, 1990, and continuing on each April 6 of each year thereafter until the full sum of principal and interest is paid in full.

Interest shall commence on the date hereof.

All payments shall be applied first to interest accrued to the date payment is received by the Holder of this Note and then to reduce the principal amount of this Note. If any installment is not made within thirty (30) days of the due date thereof, such installment shall bear interest at the rate described above from its due date until paid, but in no event shall any installment of principal and interest so compounded exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law.

In the case of default in the payment of any installment for a period of more than thirty (30) days after the same becomes due and payable, the whole of the principal sum then remaining unpaid, together with interest thereon that shall have accrued, shall, at the election of the Holder of this Note, become immediately due and payable.

In the event any suit or action is instituted by the Holder of this Note to collect any sum secured hereby, the prevailing party shall recover, in addition to costs provided by law, reasonable attorney fees, at both trial and on appeal, as shall be determined by the court having jurisdiction over any suit or action.

All parties to this note, including guarantors, sureties, and endorsers, hereby severally waive presentment, protest and notice of non-payment or any release or discharge arising from any extension of time of payment or from any other case, at or after maturity.

Maker does hereby agree to execute any assignments, security interest, deeds of trust, or other documents necessary to continue Payor's security position.

Maker shall have the privilege of paying off the full amount of this Note, including interest that shall have accrued, at any time without penalty.

Kenneth Dean Masten  
KENNETH DEAN MASTEN

Connie Masten  
CONNIE MASTEN

APR 7 7 46 PM '89

THIS MORTGAGE, made this 10 day of April, 1989, by KENNETH DEAN MASTEN and CONNIE MASTEN, husband and wife, hereinafter called "Mortgagor", to STANLEY C. MASTEN and PATRICIA A. MASTEN, husband and wife, hereinafter called "Mortgagee";

# WITNESSETH:

That Mortgagor, for valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey, mortgage and confirm unto Mortgagee, their heirs, executors, administrators, successors and assigns, the property situate in the County of Klamath, State of Oregon, and more particularly described in Exhibit "A", attached hereto.

## TOGETHER WITH:

1. The tenements, hereditaments, and appurtenances now or hereafter used or usable in connection with the above described real property;
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 real property during the term of this mortgage, including all fixtures, now or hereafter a part of, or used in connection with said improvements.

## THIS MORTGAGE IS GIVEN TO SECURE THE FOLLOWING:

1. Performance by Mortgagor of the covenants and agreements of Mortgagor contained in this mortgage instrument;
2. The payment of that certain promissory note of even date in the principal sum of \$93,000.00, 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 mortgage instrument.

**TO HAVE AND TO HOLD** the said mortgaged property to the said Mortgagee, Mortgagee's heirs, executors, administrators, successors and assigns until the obligations secured by this mortgage instrument 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 above set forth, 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 mortgage instrument, but shall run with the land.

**2. 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 mortgage instrument) secured hereby promptly when due.

**3. Protection of Security:** To keep the mortgaged property free of any liens of every kind which are superior to the lien of this mortgage; not to commit nor permit any waste to or on the mortgaged property; and not to permit nor to commit anything which shall impair the security created by this mortgage instrument. If a notice of lien or of delivery of materials is served upon Mortgagee by any mechanic lienor, Mortgagee shall provide a bond therefor or an irrevocable letter of credit from a responsible financial institution and will defend Mortgagee and indemnify and hold Mortgagee harmless from such lien and any costs with relation thereto, including attorney fees incurred by Mortgagee or adjudged against Mortgagee, if any.

**4. Payment of Taxes and Assessments:** To pay regularly and seasonably when they first become payable and before they begin to bear interest, all taxes, assessments and charges of whatever nature levied and assessed against the mortgaged property, or any part thereof.

**5. Condemnation:** In the event any governmental agency or entity having the power of eminent domain acquires by eminent domain, or by negotiated sale in lieu of eminent domain, all, or any portion, of the real property described in this mortgage instrument, Mortgagee may require Mortgagor to apply all proceeds received by Mortgagor from such acquisition (remaining after payment by Mortgagor of attorney fees, appraiser fees, and related necessary and reasonable costs in connection with securing said proceeds), which proceeds are hereinafter called "net proceeds", toward the payment of the sums secured by this mortgage instrument. Upon receipt of said net proceeds, Mortgagor shall notify Mortgagee of the amount of said net proceeds and Mortgagee shall, within ten (10) days after such notification, notify Mortgagor if Mortgagee elects to have said net proceeds applied toward payment of the sums secured by this mortgage instrument. If Mortgagee fails to so notify Mortgagor of such election, Mortgagee shall conclusively be deemed to have elected not to require Mortgagor to apply said net proceeds toward the sums secured by this mortgage instrument. If Mortgagee elects to have said net proceeds applied toward payment toward the sums secured by this mortgage instrument, the amount to be received by Mortgagee shall not exceed the total of the principal secured by this mortgage instrument, plus accrued interest thereon to the date of receipt thereof by Mortgagee. Regardless of whether Mortgagee elects to have said net proceeds applied to the sums secured by this mortgage instrument, Mortgagee shall release from the lien of this mortgage instrument so much of the real property above described acquired by such governmental agency or entity by eminent domain, but Mortgagee shall not be required to partially release more property than that which is acquired by such governmental agency or entity. Mortgagee shall not be obligated to participate in any negotiations with such governmental agency or entity.

**6. 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 mortgage instrument, Mortgagee, at Mortgagee's own expense 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, 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 mortgage instrument 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.

**7. 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 mortgage instrument, or any part thereof, or in the repayment of any disbursement authorized by the terms of this mortgage 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 mortgage instrument, or in the event of the breach of any of the covenants or agreements by Mortgagor, Mortgagee may at once proceed to foreclose this mortgage of the amount due, or in the case of default as aforesaid, or in the event of the violation, non-performance or breach of any of the covenants, conditions, agreements, or warranties herein or in the promissory note secured by this mortgage, 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 mortgage 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, or any part or parts thereof, either together or in parcels, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the monies 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 provided, including such payments 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. Mortgagor shall not be deemed to be in default of any covenant herein, other than payment, unless Mortgagee shall have first notified Mortgagor in writing of said default and Mortgagor shall not have cured said default within forty-five (45) days thereafter.

**8. 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 provisions of this mortgage instrument, 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 mortgage instrument on any of the real property above described in this mortgage instrument and this mortgage instrument shall be security for the payment thereof.

**9. 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 mortgage instrument 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.

**10. Waiver:** No waiver by Mortgagee of any breach of any covenant or agreement of this mortgage instrument by Mortgagor shall be construed as a continuing waiver of any subsequent breach of such covenant, nor as a waiver of any breach of any other covenant, nor as a waiver of the covenant itself, nor as a waiver of this provision.

**11. Binding Effect of Mortgage Instrument:** This mortgage instrument contains a full understanding of the Mortgagor and the Mortgagee with respect to the provisions set forth herein and no modification of this mortgage instrument shall be given effect unless the same is in writing, subscribed by the Mortgagor and the Mortgagee (or Mortgagee's respective successor in interest) and made of record in the same manner as this mortgage instrument is made of record.

**12. Notices:** Any notice or notices required to be given by either Mortgagor to Mortgagee or Mortgagee to Mortgagor pursuant to any provision of this mortgage instrument 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, shall 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 of delivery of such notice.

**13. Binding Effect and Construction of Mortgage Instrument:** This mortgage instrument 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 continuing this mortgage instrument, the singular shall include both the singular and the plural and the masculine the masculine, the feminine, and the neuter. The headings contained in this mortgage instrument are for convenience only and are not to be construed as part of this mortgage instrument. To the extent that an exhibit is attached to this mortgage instrument, the same is hereby

incorporated into this mortgage instrument as though fully set forth at the place in this mortgage instrument at which reference to said exhibit is made.

**WITNESS** the hands and seals of the parties hereto the day and year first above written.

**MORTGAGOR:**

Kenneth Dean Masten  
KENNETH DEAN MASTEN

Connie Masten  
CONNIE MASTEN

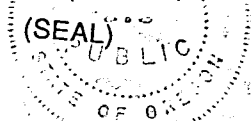
**MORTGAGEE:**

Stanley C. Masten  
STANLEY C. MASTEN

Patricia A. Masten  
PATRICIA A. MASTEN

STATE OF OREGON )  
County of Klamath ) ss.

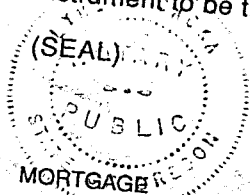
On this 7th day of April, 1989, personally appeared before me Kenneth Dean Masten and Connie Masten and acknowledged the foregoing instrument to be their voluntary act and deed.



Spita Cacka  
Notary Public for Oregon  
My Commission expires: 3-24-94

STATE OF OREGON )  
County of Klamath ) ss.

On this 7th day of April, 1989, personally appeared before me Stanley C. Masten and Patricia A. Masten and acknowledged the foregoing instrument to be their voluntary act and deed.



Spita Cacka  
Notary Public for Oregon  
My Commission expires: 3-24-94

## EXHIBIT A

follows, to-wit:

Those portions of Lot 2, Lot 3, Lot 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$  and E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 18, Township 39 South, Range 11 East, W.M., lying West of the master drain and south of a diagonal drain as the same are presently located and constructed and containing 253 acres, more or less, together with 66 pieces of 8-inch mainline; 50 pieces of 6-inch mainline; 10 pieces of 5-inch mainline; 64 pieces of 3-inch handmove lateral lines; two 5-inch  $\frac{1}{4}$ -mile wheelline with two power movers; one 30-horsepower pump with switch; and one 40-horsepower pump with switch.

STATE OF OREGON,  
County of Klamath ss.

Filed for record at request of:

S.C. Masten  
on this 7th day of April A.D., 19 89  
at 4:26 o'clock P.M. and duly recorded  
in Vol. M89 of Mortgages Page 5995  
Evelyn Biehn County Clerk  
By Douline Mullins Deputy.

Fee, \$38.00

Return: S.C. Masten  
P.O. Box 156  
Bonanza, Or. 97623