

ASSIGNMENT AND MORTGAGE

DATED: March 20, 1990

PARTIES: STANLEY C. MASTEN and PATRICIA  
A. MASTEN  
P. O. Box 156  
Bonanza, OR 97623

Assignor-Mortgagor

SOUTH VALLEY STATE BANK  
5215 South Sixth Street  
Klamath Falls, OR 97603

Assignee-Mortgagee

## R E C I T A L S:

A. The Assignor-Mortgagor is the owner and holder of a Sellers interest in a Contract of Sale, wherein Kenneth G. Gordon is Buyer, as disclosed by Memorandum of Land Sale contract dated June 1, 1989, recorded June 9, 1989 in Volume M-89, page 10303, Deed Records of Klamath County, Oregon, concerning the following described real property:

E½ of Section 35, Township 38 South, Range 11½ East of the Willamette Meridian, lying South of the Bonanza-Dairy Highway and EXCEPTING THEREFROM that portion conveyed to Richard H. Hovey by deed recorded in Volume 91, page 539, Deed Records of Klamath County, Oregon.

The N½SW¼, NW¼SW¼, and the SW¼NW¼, lying South of the Dairy-Bonanza Highway and South of the existing Horsefly Irrigation Ditch, AND EXCEPTING FROM THE ENTIRE PARCEL a strip of land 20 feet in width for roadway off the East side, all in Section 36, Township 38 South, Range 11½ East of the Willamette Meridian

B. The Assignor-Mortgagor desires to borrow funds from the Assignee-Mortgagee and to use their interests in the above-mentioned real property as security for said loan.

C. In consideration of the loan of money hereinafter described, the Assignor-Mortgagor assigns and mortgages and the parties agree as follows:

## AGREEMENT

## SECTION 1. ASSIGNMENT:

1.1 For value received by Assignor from Assignee, Assignor hereby grants, bargains, sells and conveys to Assignee, its successors and assigns, all of Assignors' right, title and interest in the contractual rights set forth in Recital A.

1.2 The Assignors warrant that there is now due not less than \$275,000.00 upon the Contract of Sale, and that the Assignors will not accept any prepayments or pay-offs upon said Contract of Sale without applying the excess proceeds to the obligation due to the Assignee herein.

1.3 In the event of default of the obligation hereinafter mentioned, the Assignor appoints the Assignee their attorney-in-fact with full power of substitution to enforce

the obligations of the above-mentioned interests in real property and to collect the amounts due thereunder and apply the same to the obligations of the Assignor herein, without prejudice to the other rights of the Assignee herein.

## SECTION 2. CONVEYANCE

For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the real property described in Recital A, together with the appurtenances now or hereafter belonging to the property, and all the rents, issues and profits arising or to arise therefrom. All property subject to this Mortgage is hereinafter referred to as the "Mortgaged Premises". Until default, Mortgagor will remain in possession of the Mortgaged Premises, and may manage and collect all revenues from the Mortgaged Premises.

## SECTION 3. PURPOSE

This conveyance is intended as a mortgage to secure the performance of the covenants and agreements herein contained and contained in any loan agreement, security agreement or other agreement between Mortgagor and Mortgagee, and to secure the payment of a loan or loans in the sum of One Hundred Seventy-Five Thousand and No/100ths (\$175,000.00) DOLLARS, as evidenced by a promissory note held by the Mortgagee under Loan Number 204070, together with interest payable on the unpaid balances thereof at the rates specified in the notes or at such other rates prescribed from time to time by Mortgagee in accordance with law and agreement with Mortgagor, and any or all renewals or extensions thereof. All covenants and provisions of this Mortgage shall bind the successors and assigns of Mortgagor and shall inure to the benefit of the successors and assigns of Mortgagee. This Mortgage shall also include any and all future advances made by Mortgagee to Mortgagors.

## SECTION 4. WARRANTY OF TITLE

At the time of execution and delivery of this Mortgage, Mortgagor is the owner of the Mortgaged Premises in fee simple, subject to the Contract of Sale described in Recital A. Mortgagor has the right and authority to mortgage the Mortgaged Premises. Mortgagor will defend Mortgagee's rights against any liens and encumbrances other than those listed in this Mortgage.

## SECTION 5. PAYMENT AND PERFORMANCE

Mortgagor will pay, when due, the indebtedness secured by this Mortgage in accordance with the terms thereof. Mortgagor will strictly perform all obligations of this Mortgage and of any loan agreement or security agreement executed in connection with the indebtedness secured by this Mortgage. Mortgagor will promptly comply with all existing or future laws, orders and regulations of all state, federal, municipal and local governments or any similar bodies affecting the Mortgaged Premises or its use.

## SECTION 6. DEFAULT

**6.1 Events of Default:** The occurrence of any one or more of the following events shall constitute a default hereunder:

- (a) Mortgagor's default in the timely payment of

any indebtedness to Mortgagee when due;

(b) Mortgagor's failure to perform or observe all the provisions of this Mortgage;

(c) The happening of an event of default under any other agreement or security instrument between Mortgagor and Mortgagee;

(d) Mortgagor's insolvency or inability to pay their debts as they mature or Mortgagor's assignment for the benefit of creditors or filing of a voluntary petition in bankruptcy, or a voluntary petition seeking reorganization, or effecting a plan or other arrangement with creditors, or filing an answer consenting to or taking any other action indicating acquiescence in any involuntary petition pursuant to, or purporting to be pursuant to, any bankruptcy, reorganization or insolvency laws of any jurisdiction, or adjudication of Mortgagor as bankrupt or insolvent by any court of competent jurisdiction or appointment of a receiver for any substantial portion of Mortgagor's property.

(e) Sale or other transfer of the Mortgaged Premises, or any part thereof, without the prior written consent of Mortgagee.

(f) Failure of the Buyer, under the Contract of Sale, to make payments when due or default by the Buyer under the Contract of Sale of any term or condition set forth in the Contract of Sale.

6.2 Remedies on Default. If any default occurs, Mortgagee may, at its option, declare the entire unpaid balance of principal and accrued interest secured by this Mortgage immediately due and payable, together with any prepayment penalties imposed by any agreement or security agreement between Mortgagor and Mortgagee, and foreclosure proceedings may be immediately commenced. The failure of Mortgagee to exercise any option given hereunder shall not be taken or deemed a waiver of its right to exercise its option as to any past or subsequent violation of any covenants or stipulations.

In addition to all other remedies provided herein, or by law, the Mortgagee, under the assignment provisions of this Agreement, may notify the Buyer under the Contract of Sale to commence making payment to the Mortgagee.

#### SECTION 7. ATTORNEY FEES AND OTHER COSTS:

In the event suit or action is begun to foreclose this Mortgage, Mortgagor will pay, in addition to the costs and disbursements allowed by law, such sums as the court may adjudge reasonable as attorney fees in such suit or action, or any appeal therefrom. Mortgagor will also pay such sums as the court may adjudge reasonable for the necessary examination and search of the public records respecting the title to the Mortgaged Premises. The Mortgagee in such suit or action may take judgment therein for such sums. Mortgagor will pay to Mortgagee all sums, including costs, expenses and reasonable agent and attorney fees, which Mortgagee may expend or become obligated for in any proceedings, legal or otherwise, involving the title to the Mortgaged Premises, or to establish, protect or sustain the lien of this Mortgage, or its priority, or in defending against liens, claims, rights, estates, easements or restrictions, or for evidences of title to the Mortgaged Premises. Interest shall be

paid to Mortgagee on all such sums as the rate then payable on the indebtedness secured hereby. This Mortgage shall stand as security for payment of these sums and interest in like manner and effect as for payment of the indebtedness secured.

# SECTION 8. MISCELLANEOUS.

8.1 Terminology: The word "Mortgagor" and the language of this instrument shall, where there is more than one Mortgage, be construed as plural and be binding jointly and severally upon all Mortgagors and the word "Mortgagee" shall apply to any holder of this Mortgage.

8.2 Nonwaiver: No condition of this Mortgage shall be deemed waived unless expressly waived in writing by Mortgagee.

8.3 Notices: Whenever any notice, demand or request is required by the terms of this Mortgage or by any law now in existence or hereafter enacted, the notice, demand or request shall be sufficient if enclosed in a post paid envelope, addressed to Mortgagor at the last address actually furnished to Mortgagee, or at the Mortgaged Premises, and deposited in any post office station or letter box.

8.4 Applicable Law: This Mortgage shall be governed by the laws of the State of Oregon and any questions arising hereunder shall be construed or determined according to such laws.

IN WITNESS WHEREOF the parties have set their hands and seals the day and year first hereinabove written.

ASSIGNOR-MORTGAGOR

Stanley C. Masten  
Stanley C. Masten

Patricia A. Masten  
Patricia A. Masten

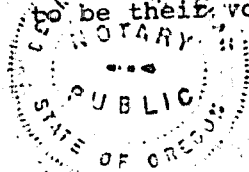
ASSIGNEE-MORTGAGEE

SOUTH VALLEY STATE BANK, an  
Oregon corporation,

By: Jim Mielczyk

STATE OF OREGON           )  
                                  ) ss.  
County of Klamath        )

Personally appeared the above-named STANLEY C. MASTEN and PATRICIA A. MASTEN, and acknowledged the foregoing instrument to be their voluntary act. Before me.



Debra Buckingham  
Notary Public for Oregon  
My Commission expires: 12-19-92

Return to:  
South Valley Bank  
4. ASSIGNMENT AND MORTGAGE  
90-03-06d (MP36)

5215 S 6th St  
Klamath Falls, OR  
97603