

14863

Vol. m90 Page 9220

mtc 1396-2067  
MORTGAGE

DATE: May 1, 1990

PARTIES: I. F. RODGERS and SONS, a partnership  
consisting of I. F. RODGERS, LORRAINE  
G. RODGERS, RONALD R. RODGERS, RUSSELL  
R. RODGERS, and RADLEY R. RODGERS.

I. F. RODGERS and SONS, a partnership  
consisting of I. F. RODGERS and LORRAINE  
G. RODGERS, Trustees of the I. F. RODGERS  
LIVING TRUST, LORRAINE G. RODGERS and  
I. F. RODGERS, Trustees of the LORRAINE G.  
RODGERS LIVING TRUST, RONALD R. RODGERS,  
RUSSELL R. RODGERS and RADLEY R. RODGERS

RONALD R. RODGERS, RUSSELL R. RODGERS and  
RADLEY R. RODGERS, individually

20909 So Poe Valley Rd  
Klamath Falls, OR 97603

MORTGAGOR

SOUTH VALLEY STATE BANK, an Oregon  
Banking Corporation

5215 South Sixth Street  
Klamath Falls, OR 97603

MOUNTAIN TITLE COMPANY, Inc. has recorded this  
instrument by request as an accommodation only,  
and has not examined it for propriety and sufficiency  
or as to its effect upon the title to any real property  
that may be described therein.

MORTGAGEE

#### AGREEMENTS:

##### SECTION 1. CONVEYANCE

For value received Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns. The real property, as described in Exhibit A attached hereto, together with the appurtenances now or hereafter belonging to the property, and all the rents, issues and profits arising or to arise therefrom, including the irrigation equipment that is attached to the real estate, as described in Exhibit B attached hereto. All property subject to this Mortgage is hereinafter referred to the mortgaged premises. Until default, Mortgagor may remain in possession of the mortgaged premises and may manage and collect all rents and revenues from the mortgaged premises.

##### 1. MORTGAGE

'90 MAY 15 AM 10 30

## SECTION 2. PURPOSE

This conveyance is intended as a mortgage to secure 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 secured payment of a loan in the principal amount of Seven Hundred Sixteen Thousand and No/100ths (\$716,000.00) DOLLARS, evidenced by the following described promissory note from Mortgagor to Mortgagee:

<u>Date of Note</u>	<u>Loan #</u>	<u>Amount</u>	<u>Maturity Date</u>
May 1, 1990	204173	\$716,000.00	May 1, 1991

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, any and all renewals, modifications, substitutions and 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.

## SECTION 3. WARRANTY OF TITLE

At the time of execution and delivery of this Mortgage, Mortgagor is the owner of the mortgaged premises in fee simple except those parcels purchased through contract as evidenced in the Mortgagees Policy K-38771 issued by Klamath County Title in the sum of \$300,000.00 dated April 6, 1987, Mortgagor has the right and authority to mortgage the mortgaged premises as provided in this Mortgage, and the mortgaged premises are free and clear of liens and encumbrances, except those evidenced in the Mortgagees Policy referred to above. Mortgagor will defend Mortgagee's right against any liens and encumbrances other than those listed in this Mortgage.

## SECTION 4. 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 their use.

## SECTION 5. CHARGES AGAINST MORTGAGED PREMISES

5.1 Taxes and Utilities. Mortgagor will pay when due all taxes, assessments, water and other charges for utility services that may be levied, assessed or charged upon or against the mortgaged premises, or any part thereof. Upon request, Mortgagor shall deliver to Mortgagee evidence of payment of the taxes, assessments or other charges.

## 2. MORTGAGE

5.2 Liens and Encumbrances. Mortgagor will promptly pay and satisfy any construction liens or other encumbrances that might by operation of law or otherwise become a lien upon the mortgaged premises, whether or not superior to the lien of this Mortgage. Mortgagor may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as Mortgagee's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Mortgagor shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien, or deposit with Mortgagee cash or a sufficient corporate surety bond or other security satisfactory to Mortgagee in an amount of sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

5.3 Insurance and other Charges. Mortgagor will pay when due all premiums upon insurance policies on the mortgaged property, all licenses or fees legally owing by it and all rental or other charges for the use of any leased ground or premises upon which any of the mortgaged premises may be located.

5.4 Failure to Pay. In case of default in payment of any charges Mortgagor is required to pay pursuant to this Mortgage, Mortgagee, its successors and assigns, may at its option pay any insurance premiums, or reinsure the mortgaged premises and pay all premium therefor; and pay licenses, fees, rentals, charges, taxes and/or assessments due or claimed to be due under any legislative power of authority or under any valid contract; and any amounts so paid by Mortgagee shall become part of the principal debt; and amounts so paid by Mortgagee shall bear interest at the rate of 24% from the date of payment.

5.5 Reserve for Insurance and Taxes. In the event Mortgagor fails to pay when due any taxes, upon the written election of the Mortgagee, duly sent to the Mortgagor, the Mortgagor agrees to pay Mortgagee, in addition to the past due taxes, with and in addition to the payments of principal and interest on any indebtedness, one-twelfth (1/12th) of the annual taxes as reasonably estimated by Mortgagee on a monthly basis.

The reserve payments shall be held by Mortgagee in a separate account, to pay the taxes when they become due and payable, and Mortgagee shall not be obliged to pay Mortgagor interest or other earnings which may be derived from Mortgagee's use of the funds in the reserve account.

## SECTION 6. CONDITION OF MORTGAGED PREMISES

6.1 Repairs and Maintenance. Mortgagor will keep all improvements erected on the mortgaged premises in good order and repair.

6.2 First-Class Condition. Mortgagor will maintain the mortgaged premises in first-class condition.

## 3. MORTGAGE

6.3 Waste. Mortgagor will not permit waste of the mortgaged premises or do or suffer anything to be done to depreciate or impair the value of the mortgaged premises during the life of this Mortgage.

6.4 Changes and Alterations. Mortgagor will not make any changes in or alterations to the improvements on the mortgaged premises which will materially decrease the value of the same. Before making any changes in or alterations to the improvements, Mortgagor shall give notice to Mortgagee of the nature and extent of the changes or alterations and shall provide evidence of Mortgagor's ability to finance the changes or alterations.

6.5 Removal of Improvements Prohibited. Mortgagor will not remove or permit to be removed any improvements from the mortgaged premises, without the prior written consent of Mortgagee.

6.6 Right of Inspection. Mortgagee shall have the right to enter upon the mortgaged premises at all reasonable times to determine Mortgagor's compliance with this Mortgage.

#### SECTION 7. INSURANCE

7.1 Insurance Required. Mortgagor will keep the building improvements now erected, or which may hereafter be erected, on the mortgaged premises insured against loss or damage by fire with extended coverage endorsement, written by a responsible insurance company or insurance companies satisfactory to Mortgagee in an amount satisfactory to Mortgagee, naming Mortgagor and Mortgagee insured parties as their interest may appear, and will cause to be executed and attached to all policies of insurance issued thereon a clause in form satisfactory to Mortgagee, making loss payable to Mortgagee as its interest may appear. The policy or policies of insurance shall be delivered to Mortgagee and shall contain a provision requiring at least ten (10) days notice to Mortgagee before cancellation. Mortgagor agrees to notify Mortgagee of any casualty affecting the mortgaged premises.

7.2 Disposition of Insurance Proceeds. Any insurance funds paid to Mortgagee as a result of damage or loss to the mortgaged premises covered may, at the option of Mortgagee, be released to Mortgagor to be expended in the repair, restoration or replacement of the mortgaged premises so damaged or lost, or be retained by Mortgagee and be applied toward the payment of all or such of the items indebtedness secured as Mortgagee may elect. Mortgagor hereby appoints Mortgagee agent to collect all amounts payable under the policies to Mortgagor, and amounts retained by Mortgagee, after the cost of collection, shall be applied to payment of the principal sum and interest thereon, and other sums secured by this Mortgage.

## SECTION 8. ASSIGNMENT OF ISSUES AND PROFITS

Mortgagor hereby assigns and transfers to Mortgagee the issues and profits, together with full power and authority to demand, sue for and collect the same in the name of Mortgagor, or in its own name, and to take possession of and manage the mortgaged premises or to cause a receiver to be appointed for such purpose and apply the income therefrom, after the costs of collection and management, to the reduction of the indebtedness secured hereby. However, the right to collection and management shall not apply as long as this Mortgage is in good standing.

## SECTION 9. DEFAULT

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute a default hereunder (a Default):

(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 its 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 a court of competent jurisdiction or appointment of a receiver for any substantial portion of Mortgagor's property.

9.2 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. All rights and remedies of Mortgagee shall be cumulative and nonexclusive and in addition to any other right or remedy contained in this Mortgage or otherwise available under applicable law. 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.

## 5. MORTGAGE

## SECTION 10. 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 sum as the Court may adjudge reasonable attorney fees in such suit or action or upon any appeal or petition for review. Mortgagor will also pay such sum as the Court may adjudge reasonable for the necessary examination and search of the public records respecting the title to the mortgaged premises. The Plaintiff 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 at 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 11. CONDEMNATION

If the mortgaged premises, or any part thereof, are condemned under any power of eminent domain or acquired for public use, the damages, proceeds, and the consideration for such acquisition, to the extent of the full amount of indebtedness secured by this Mortgage, including any expenses and attorney fees incurred by Mortgagee on account of such condemnation, are hereby assigned by Mortgagor to Mortgagee and shall be paid forthwith to Mortgagee to be applied by it to the payment of such expenses and attorney fees and any balance on account of the last maturing portion of the indebtedness secured hereby.

## SECTION 12. MISCELLANEOUS

12.1 Terminology. The word "Mortgagor" and the language of this instrument shall, where there is more than one Mortgagor, 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.

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

12.3 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 postpaid 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.

## 6. MORTGAGE

12.4 Transfer. Mortgagor shall have the right to transfer the mortgaged premises at any time, with or without Mortgagee's consent.

12.5 Time of Essence. Time is of the essence of this Mortgage.

12.6 Applicable Law. This Mortgage shall be governed by the law of the State of Oregon, and any question arising hereunder shall be construed or determined according to such law.

The parties have executed this agreement as of the date first written above.

I. F. RODGERS AND SONS,  
a General Partnership

By: I. F. Rodgers  
I. F. Rodgers  
aka Isiah F. Rodgers, Partner

By: Lorraine G. Rodgers  
Lorraine G. Rodgers, Partner

By: Radley R. Rodgers  
Radley R. Rodgers, Partner

By: Russell R. Rodgers  
Russell R. Rodgers, Partner

By: Ronald R. Rodgers  
Ronald R. Rodgers, Partner

By: I. F. RODGERS LIVING TRUST

By: I. F. Rodgers  
I. F. Rodgers, Trustee

By: Lorraine G. Rodgers  
Lorraine G. Rodgers, Trustee

By: LORRAINE G. RODGERS LIVING  
TRUST

By: I. F. Rodgers  
I. F. Rodgers, Trustee

By: Lorraine G. Rodgers  
Lorraine G. Rodgers, Trustee



Ronald R. Rodgers  
 Ronald R. Rodgers, Individually

Russell R. Rodgers  
 Russell R. Rodgers, Individually

Radley R. Rodgers  
 Radley R. Rodgers, Individually

MORTGAGORS

STATE OF OREGON  
 County of Klamath

Signed before me this 7th day of May, 1990.

Terrie L. Hinckley  
 Notary Public  
 My Commission Expires: 2-12-91

Personally appeared the above named I. F. Rodgers, a Partner and  
 and Trustee; Lorraine G. Rodgers, a Partner and Trustee; Ronald R.  
 Rodgers, a Partner and individually; Russell R. Rodgers, a Partner  
 and individually; and Radley R. Rodgers, a Partner and individually,  
 and acknowledged the foregoing Mortgage to be their voluntary act  
 and deed.

Before me this 7th day of May:

Terrie L. Hinckley  
 Notary Public for Oregon  
 My commission expires: 2-21-91



EXHIBIT A

(PAGE 1 OF 2)

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

PARCEL ONE:

Township 40 South, Range 11 East of the Willamette Meridian

- Section 3: S $\frac{1}{2}$ SW $\frac{1}{4}$   
 Section 4: Lot 18, Lot 19, Lot 20, E $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$   
 Section 5: Lots 17 and 18; the N $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$   
 Section 9: N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$   
 Section 10: NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$   
 Section 15: NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$

PARCEL TWO:

Township 40 South, Range 11 East of the Willamette Meridian

- Section 3: Lots 16 and 17, and Lots 15 and 18, EXCEPTING that portion conveyed to the United States of America by deed dated July 2, 1912, recorded July 6, 1912, in Deed Volume 37 on page 416, records of Klamath County, Oregon.

N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$

A portion of Lots 19 and 20, more particularly described as follows: Beginning at a point on the South line of Lot 19, which is 505 feet West, more or less, from the Southeast corner of said Lot 19 and in the center of the irrigation ditch which intersects said South line of said Lot 19; thence continuing West along the South line of Lot 19 a distance of 1492 feet; thence North parallel to the East line of said Lot 19 to the center of irrigation ditch; thence following the center line of said irrigation ditch in a Northeasterly and Southerly direction to the point of beginning.

- Section 4: NE $\frac{1}{4}$ SE $\frac{1}{4}$   
 Section 10: E $\frac{1}{2}$ NE $\frac{1}{4}$

PARCEL THREE:

Township 40 South, Range 11 East of the Willamette Meridian

- Section 3: All of Government Lots 2, 3, 4, 5, 6, 7, 10, 11 and 12 EXCEPTING therefrom a parcel of land situated in Government Lot 4, being more particularly described as follows: Beginning at the intersection of the South line of South Poe Valley Road the East line of Schaupp Road; thence South along the East line of Schaupp Road, a distance of 492 feet, more or less, to an existing fence; thence East along existing fence line a distance of 840 feet; thence in a Northwesterly direction following the centerline of an existing irrigation ditch, 531 feet, more or less, to a point on the South line of the South Poe Valley Road; thence West along the South line of said road a distance of 625 feet, more or less, to the point of beginning, in Section 3, Township 40 South, Range 11 East of the Willamette Meridian.

EXHIBIT A

(PAGE 2 OF 2)

ALSO EXCEPTING therefrom that portion thereof conveyed by John Fischer to the United States of America recorded in Deed Volume 39 on page 20, Deed Records of Klamath County, Oregon.

Section 4: Government Lots 8 and 9

PARCEL FOUR:

Township 39 South, Range 11 $\frac{1}{2}$  East of the Willamette Meridian

Section 34: The W $\frac{1}{2}$ SW $\frac{1}{4}$ , EXCEPT 1 acre deeded to Poe Valley Community Club, a corporation, by deed recorded in Book 66 page 376, Deed Records of Klamath County, Oregon.

Government Lots 3 and 4, All that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  lying Westerly of Lost River; SW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , EXCEPT the West 60 feet and that portion lying Northwesterly of the U.S.B.R. Drain; NE $\frac{1}{4}$ SW $\frac{1}{4}$ , the East 30 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$  lying Westerly of Lost River, and NW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 35: Government Lots 10 and 11

PAPCEL FIVE:

Township 40 South, Range 11 East of the Willamette Meridian

Section 4: The West 33 feet of Lot 2, All that portion of Lot 2 lying Southwesterly of the right of way of the United States Government Canal "F", Lots 3, 4, 5, 6, 11, 12, 13 and 14

Section 5: Lots 9, 10, 15 and 16

PARCEL SIX:

Township 40 South, Range 11 East of the Willamette Meridian

Section 7: E $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$

Section 8: SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$

Section 9: SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$

Section 16: NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$

I. F. RODGERS & SONS

*for 9711 R.R.R. R.R.R. R.R.R.*

EXHIBIT B

## SPRINKLER EQUIPMENT

11-1/2 MILE 5" PIPE & MOVER  
 11-1/4 MILE 4" & 5" PIPE & MOVER  
 BURIED MAINLINE-2640' 10" PIPE TO 4" PIPE  
                                   1320' 6" PIPE  
 MAINLINE-1500' 10" PIPE  
                                   2820' 8" PIPE  
                                   10,440' 6" PIPE  
 2-15 H.P. LIFT PUMPS & PANELS  
 3-25 H.P. PUMPS & PANEL  
 2-50 HIGH PRESSURE PUMPS  
 4-75 H.P. PUMPS & PANELS  
 1-30 H.P. PUMP & PANEL  
 3960' 3" PACKLINE PIPE

CONNECTING HOSES, PLUGS, T'S & ELBOWS, VALVE OPENERS, EXTRA  
 SPRINKLER HEADS, PRIMER PUMPS, PIPE WAGON AND TWO TRACTOR  
 PUMPS

RETURN TO: SOUTH VALLEY STATE BANK  
 5215 SOUTH 6TH STREET  
 KLAMATH FALLS, OR 97603

*for & for R.R.R. O.G.R. R.R.*

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 15th day  
 of May A.D., 19 90 at 10:30 o'clock A.M., and duly recorded in Vol. M90,  
 of Mortgages on Page 9220.

FEE \$58.00

Evelyn Biehn, County Clerk

By Dorlene Muelndore