

71352

Vol. 72 Page 14371MORTGAGE

28-3767
THIS MORTGAGE made and entered into as of the 15th day of December, A. D. 1972, by A. M. WARMERDAM and JOHN VAN RUITEN, as PRINCIPALS, and ANN VAN RUITEN and FRANCES A. WARMERDAM, as GUARANTORS, hereinafter known and referred to as MORTGAGORS, to HELEN P. MALTBY, as MORTGAGEE;

W I T N E S S E T H :

THAT said MORTGAGORS in consideration of ONE HUNDRED TWENTY EIGHT THOUSAND and NO/100 (\$128,000.00) DOLLARS to them paid by said MORTGAGEE do hereby grant, bargain, sell and convey unto said MORTGAGEE, her heirs, executors, administrators and assigns that certain real property situate in the County of Klamath, State of Oregon, more particularly described as follows, to-wit:

In Township 40 South, Range 8 East of the Willamette Meridian:

Section 2: Government Lots 4 and 10

Section 3: The South Half of the South Half ($S\frac{1}{2}S\frac{1}{2}$)

Section 9: The Northeast Quarter ($NE\frac{1}{4}$), East Half of the Northeast Quarter of the Northwest Quarter ($E\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$), the East 20 acres of Government Lot 12, the East Half of the Southeast Quarter ($E\frac{1}{2}SE\frac{1}{4}$), and Government Lots 1, 2, 3, 8, 9, 10 and 11

Section 10: The North Half of the Northwest Quarter ($N\frac{1}{2}NW\frac{1}{4}$), Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}NW\frac{1}{4}$), West Half of the Southwest Quarter ($W\frac{1}{2}SW\frac{1}{4}$), Government Lots 8, 9, 10, 11 and 12. Also that part of Section 10 described as follows: Beginning at a point at which the present boundary fence intersects the meander line ran on the Easterly border of tule marsh on right or west bank of Klamath River approximately North $14^{\circ}5'$ East 33.20 chains from the fractional section corner common to Sections 10 and 15 on said meander line; thence, along the boundary fence North $14^{\circ}30'$ East 4.30 chains; thence, North 29° East 7.00 chains; thence, North $26^{\circ}15'$ East 8.75 chains to said meander line; thence, back along said meander line South $51^{\circ}30'$ West 1.00 chains; thence South $26^{\circ}15'$ West 8.00 chains; thence, South $30^{\circ}15'$ West 7.00 chains; thence, South 6° West 4.00 chains more or less to the point of beginning. BUT EXCEPTING FROM Lots 8 and 9 above, the following parcel: Beginning at the fractional section corner common to Sections 10 and 15, 27.60 chains East of the Sec-

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tion corner common to Sections 9, 10, 15 and 16, Township 40 South, Range 8 East of the Willamette Meridian; thence, West .50 chains to the present boundary fence; thence following said fence North 52°35' East .40 chains; thence, North 14°30' East along said fence 32.80 chains more or less to the meander line ran on the East boundary of the tule marsh on the right or West bank of the Klamath River; thence, following said meander line South 6° West 14.0 chains; thence, South 23°15' East 7 chains; thence, South 3°30' East 8 chains; thence, South 65°45' West 10.45 chains to the point of beginning. AND EXCEPTING FROM Lot 12 above the following parcel: Beginning at the fractional section corner between Sections 10 and 11, 6.38 chains South of the sections corner common to Sections 2, 3, 10 and 11, Township 40 South, Range 8 East of the Willamette Meridian; thence, along the meander line South 67°15' West 19.80 chains more or less to the present boundary fence; thence, North 63°30' East 20.60 chains more or less to the Section line between Sections 10 and 11; thence, South 1° West along the section line 1.55 chains to the point of beginning.

Section 11: Government Lot 6 BUT EXCEPTING THEREFROM the following Parcel: Beginning at the fractional section corner between Sections 10 and 11, 6.38 chains South of the Section corner common to Sections 2, 3, 10 and 11, Township 40 South, Range 8 East of the Willamette Meridian; thence North 55°15' East along the meander line 9.07 chains to the present boundary fence; thence South 63°30' West 8.60 chains along said fence to the Section line; thence South 1° West 1.55 chains to the point of beginning.

Section 15: Lot 2; and all that part of Lot 1 lying South of a line drawn East and West from a point 6.69 chains South of fractional section corner common to Sections 15 and 16. AND ALSO Lot 19 SAVING AND EXCEPTING THEREFROM: Beginning at the fractional Section corner common to Sections 10 and 15, 27.60 chains East of the corner common to Sections 9, 10, 15 and 16, Township 40 South, Range 8 East of the Willamette Meridian; thence, along the meander line South 46°30' West 20.60 chains; thence, South 61°15' West 15.13 chains more or less to the boundary fence at the fractional section corner common to Section 15 and 16; thence, North 1° East .25 chains to a fence corner; thence, North 52°35' East along said boundary fence 34.80 chains more or less to the North Section line of Section 15; thence, East 50 links to the point of beginning.

Section 16: Government Lots 7, 8, 9, 10, 15, 16, 17 and the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$).

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and which may hereafter thereto belong or appertain, and the

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rents, issues and profits therefrom, and any and all fixtures upon said premises at the time of the execution of this Mortgage or at any time during the term of this Mortgage.

To have and to hold the said premises with the appurtenances unto said MORTGAGEE, her heirs, executors, administrators and assigns forever.

This Mortgage is intended to secure the payment of a certain Promissory Note of even date, a copy thereof being hereto attached, marked Exhibit "A", and by this reference made a part hereof as fully and completely as if the same were wholly set forth herein.

And said MORTGAGORS covenant to and with the MORTGAGEE, her heirs, executors, administrators and assigns, that they are lawfully seized in fee simple of said premises and have a valid, unencumbered title thereto, save and except:

- (1) Special use requirement under special land use assessment as farm lands under and by virtue of the laws of the State of Oregon;
- (2) Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals, of Keno Irrigation District.
- (3) Rights of governmental bodies in and to any portion of the above described premises lying below the high water mark of Klamath River.
- (4) Right of way, including the terms and provisions thereof, given by Martha E. Kerns, a widow, to The California Oregon Power Company, dated October 19, 1932, recorded December 15, 1932, in Book 99 at page 282, Deed Records of Klamath County, Oregon.
- (5) Right of way, including the terms and provisions thereof, given by Ruth Kerns Ray and George D. Ray, to The Pacific Telephone and Telegraph Company, a California corporation, dated August 6, 1937, recorded December 15, 1937, in Book 113 at page 374, Deed Records of Klamath County, Oregon.
- (6) Easement, including the terms and provisions thereof, from Henry H. Ray and Beulah Kerns Ray to the Pacific Telephone and Telegraph Company, a California corporation, dated August 19, 1937, recorded December 15, 1937, in Book 113 at page 366, Deed Records of Klamath County, Oregon.

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- (7) Agreement and waiver of damages with respect to control of water, including the terms and provisions thereof, executed by Keno Irrigation District, et al., to The California Oregon Power Company, dated May 31, 1930, recorded January 15, 1932, in Book 96 at page 575, Deed Records of Klamath County, Oregon.
- (8) Agreement and waiver of damages with respect to control of water, including the terms and provisions thereof, executed by Keno Irrigation District, et al., to The California Oregon Power Company, et al., dated May 31, 1930, recorded January 15, 1932, in Book 96 at page 580, Deed Records of Klamath County, Oregon.
- (9) Agreement and waiver of damages with respect to control of water, including the terms and provisions thereof, executed by Keno Irrigation District, et al., to California Oregon Power Company, et al., dated May 31, 1930, recorded January 25, 1932, in Book 96 at page 617, Deed Records of Klamath County, Oregon.
- (10) Agreement and release of damages concerning water level of Lake Euwana and Klamath River, including the terms and provisions thereof, executed by George D. Ray, et ux., and The California Oregon Power Company, et al., dated February 10, 1937, recorded February 13, 1937, in Book 108 at page 122, Deed Records of Klamath County, Oregon.
- (11) Agreement concerning dike and wharf, including the terms and provisions thereof, between J. P. Lee and B. E. Kerns, dated October 29, 1915, recorded October 29, 1915, in Book 45 at page 168, Deed Records of Klamath County, Oregon.
- (12) Agreement and release of damages, including the terms and provisions thereof, from W. T. Lee, et al., to California Oregon Power Company, et al., dated October 10, 1930, recorded January 15, 1932, in Book 96 at page 590, Deed Records of Klamath County, Oregon.
- (13) Easement and conveyance, including the terms and provisions thereof, from W. T. Lee, et al., to The California Oregon Power Company, dated October 10, 1930, recorded January 15, 1932, in Book 96 at page 591, Deed Records of Klamath County, Oregon.
- (14) Right of way, including the terms and provisions thereof, from Beulah Kerns Ray and Henry H. Ray to The California Oregon Power Company, dated December 26, 1947, recorded January 20, 1948, in Book 216 at page 63, Deed Records of Klamath County, Oregon.
- (15) Reservation of hunting rights, including the terms and provisions thereof, contained in Deed from George D. Maltby and Helen P. Maltby, husband and wife, dated August 29, 1955, recorded August 30, 1955, in Book 277 at page 126, Deed Records of Klamath County, Oregon. (Affects Tax Lot 95-1)

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(16) Agreement with Pacific Power and Light Company, including the terms and provisions thereof, for deposit of spoil material from river dredging, and release of damages, as recorded May 29, 1968, in M-68 at page 4805.

and will warrant and forever defend the same against all persons, save and except as above set forth, and save and except that portion thereof situate Lot 6, said Section 11, the title to which MORTGAGORS do not warrant; that they will pay said Note, principal and interest, according to the terms thereof; that while any part of said Note remains unpaid they will pay all taxes, assessments and other charges of every nature which may be levied or assessed against said property, or this Mortgage or the Note above described, when due and payable and before the same may become delinquent; that they will promptly pay and satisfy any and all liens or encumbrances that are or may become liens on said premises or any part thereof superior to the lien of this Mortgage; that they will keep the buildings now on or which hereafter may be erected on said premises continuously insured against loss or damage by fire or such other hazards as the MORTGAGEE may from time to time require, in an amount not less than the insurable value thereof and which will guarantee the replacement thereof, with loss payable first to the MORTGAGEE and then to the MORTGAGORS as their respective interests may appear; all policies of insurance shall be delivered to the MORTGAGEE as soon as insured. Provided, however, that if the MORTGAGORS shall fail for any reason to procure any such insurance and to deliver said policies to the MORTGAGEE at least Fifteen (15) days prior to the expiration of any policy of insurance now or hereafter placed on said buildings, the MORTGAGEE may procure the same at MORTGAGORS' expense; and if the MORTGAGORS shall fail within Ten (10) days after notice of such expenditure by MORTGAGEE to reimburse the MORTGAGEE then and in such event, failure to reimburse MORTGAGEE shall be considered to be a violation of the terms

hereof and a cause of default hereunder at MORTGAGEE'S option.

The MORTGAGORS further covenant that they will keep the buildings and improvements on said premises in good repair and will not commit or suffer any waste of said premises.

NOW, THEREFORE, if said MORTGAGORS shall keep and perform the covenants herein contained and shall pay said Note according to its terms, this conveyance shall be void, but otherwise shall remain in full force as a Mortgage to secure the performance of all of said covenants and the payment of said Note; it being agreed that a failure to perform any covenant herein, or if a proceeding of any kind be taken to foreclose any lien on said premises or any part thereof, the MORTGAGEE shall have the option to declare the whole amount unpaid on said Note or on this Mortgage at once due and payable, and this Mortgage may be foreclosed at any time thereafter. And if the MORTGAGORS shall fail to pay any taxes or charges or any lien or encumbrances or insurance premiums as above provided for, the MORTGAGEE may at her option do so, and any payment so made shall be added to and become a part of the debt secured by this Mortgage, and shall bear interest at the same rate as said Note without waiver, however, of any right arising to the MORTGAGEE for breach of covenant. And this Mortgage may be foreclosed for principal, interest and all sums paid by the MORTGAGEE at any time while the MORTGAGORS neglect to repay any sums so paid by the MORTGAGEE. In the event of any suit or action being instituted to foreclose this Mortgage, the MORTGAGORS agree to pay all reasonable costs incurred by the MORTGAGEE for title reports and title search, all statutory costs and disbursements, and such further sum as the trial court may adjudge reasonable as plaintiff's attorney's fees in such suit or action, and if an appeal is taken from any judgment or decree entered therein MORTGAGORS further promise to pay such sum as the

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Appellate Court shall adjudge reasonable as plaintiff's attorney's fees on such appeal, all sums to be secured by the lien of this Mortgage and included in the decree of foreclosure.

Each and all of the covenants and agreements herein contained shall apply to and bind the heirs, executors, administrators and assigns of said MORTGAGORS and of said MORTGAGEE respectively.

In case suit or action is commenced to foreclose this Mortgage, the Court, may upon motion of the MORTGAGEE, appoint a receiver to collect the rents and profits arising out of said premises during the pendency of such foreclosure, and apply the same, after first deducting all of said receiver's proper charges and expenses, to the payment of the amount due under this Mortgage.

Provided always, however, that his Mortgage is a Second Mortgage to a First Mortgage being obtained by MORTGAGORS from the Federal Land Bank of Spokane, and, regardless of the date thereof, shall be subordinate to said Mortgage to said Federal Land Bank.

IN WITNESS WHEREOF, the MORTGAGORS have hereunto set their hands and seals as of the day and year first hereinabove written.

W. Warner (SEAL)

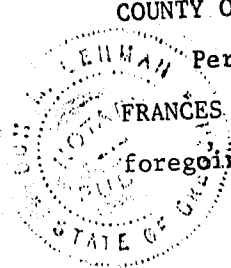
John A. P. P. P. (SEAL)
PRINCIPALS

W. Warner (SEAL)

Ann P. P. P. (SEAL)
GUARANTORS

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STATE OF Oregon } ss. DATED: Dec 14, 1972
COUNTY OF Jefferson

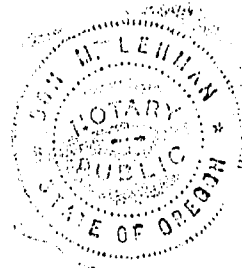


Personally appeared the above named A. M. WARMERDAM and
FRANCES A. WARMERDAM, husband and wife, and acknowledged the
foregoing instrument to be their voluntary act and deed.

Before me:

Don M. Lehman
Notary Public for
My Commission Expires: 7/6/73

STATE OF Oregon } ss. DATED: Dec 14, 1972
COUNTY OF Jefferson



Personally appeared the above named JOHN VAN RUITEN and
ANN VAN RUITEN, husband and wife, and acknowledged the fore-
going instrument to be their voluntary act and deed.

Before me:

Don M. Lehman
Notary Public for
My Commission Expires: 7/6/73

PROMISSORY NOTE

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December 15, 1972

\$128,000.00

For value received I promise to pay to HELEN P. MALTBY, or order, at Williams, California, ONE HUNDRED TWENTY EIGHT THOUSAND and No/100 (\$128,000.00) DOLLARS, in lawful money of the United States of America, with interest thereon, in like lawful money, at the rate of EIGHT (8%) per cent per annum from date until paid on the sum of SIXTY FIVE THOUSAND and No/100 (\$65,000.00) DOLLARS, payable in annual installments, at the dates and in the amounts as follows: SIXTY THREE THOUSAND and No/100 (\$63,000.00) DOLLARS, without interest, on the 5th day of January A. D., 1973, but not before January 1, 1973; interest as aforesaid from the date hereof on the remaining principal balance on the 15th day of December of the years 1973, 1974 and 1975; not less than EIGHT THOUSAND and No/100 (\$8,000.00) DOLLARS on or before the 15th day of December A. D. of the years 1976, 1977, 1978 and 1979, together with the full amount of interest due on this note at the time of payment of each installment, and the entire balance then due under this note on the 15th day of December A. D., 1980, together with interest as aforesaid on the unpaid principal balance; if any of said installments are not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. If this note is placed in the hands of an attorney for collection, each of the undersigned promises and agrees to pay holder's reasonable collection costs, including attorney's fees, even though no suit or action is filed hereon; however, if such suit or action is filed, the amount of such attorney's fees shall be fixed by the court or courts in which the suit or action including any appeal therein is tried, heard or decided.

A. M. Warmerdam

John Van Ruiten

Frances A. Warmerdam

Ann Van Ruiten

STATE OF OREGON } ss.
County of Klamath }

Filed for record at request of:

TRANSAMERICA TITLE INS. CO.
on this 11th day of December A. D., 19 72
at 3:38 o'clock P.M. and duly
recorded in Vol. M 72 of MORTGAGES
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WM. D. MILNE, County Clerk

By W. D. Milne Deputy.
Fee \$ 18.00

Exhibit A
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Return to
State Center Health
P.O. Box 739
Medford, Oregon