

A-24504

Position 5

Vol. MC Page 7103USDA-FHA  
Form FHA 427-1 OR  
(Rev. 7-1-73)

89747

## REAL ESTATE MORTGAGE FOR OREGON

KNOW ALL MEN BY THESE PRESENTS, Dated June 10, 1974

WHEREAS, the undersigned DONALD B. McCANN and ELIZABETH J. McCANN, aka  
ELIZABETH JEAN McCANN, husband and wife,

residing in KLAMATH County, Oregon, whose post office address is

ROUTE 1, BOX 800, BONANZA, OREGON 97623

herein called "Borrower," are (is) justly indebted to the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, herein called the "Government," as evidenced by one or more certain promissory note(s) or assumption agreement(s), herein called "note" (if more than one note is described below, the word "note" as used herein shall be construed as referring to each note singly or all notes collectively, as the context may require), said note being executed by Borrower, being payable to the order of the Government in installments as specified therein, authorizing acceleration of the entire indebtedness at the option of the Government upon any default by Borrower, and being further described as follows:

| Date of Instrument | Principal Amount | Annual Rate of Interest | Due Date of Final Installment |
|--------------------|------------------|-------------------------|-------------------------------|
| June 10, 1974      | \$58,060.00      | 5%                      | June 10, 2014                 |

And the note evidences a loan to Borrower, and the Government, at any time, may assign the note and insure the payment thereof pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949.

And it is the purpose and intent of this instrument that, among other things, at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the note, this instrument shall secure payment of the note; but when the note is held by an insured holder, this instrument shall not secure payment of the note or attach to the debt evidenced thereby, but as to the note and such debt shall constitute an indemnity mortgage to secure the Government against loss under its insurance contract by reason of any default by Borrower.

NOW, THEREFORE, in consideration of the loan(s) and (a) at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the payment of the note, to secure prompt payment of the note and any renewals and extensions thereof and any agreements contained therein, (b) at all times when the note is held by an insured holder, to secure performance of Borrower's agreement herein to indemnify and save harmless the Government against loss under its insurance contract by reason of any default by Borrower, and (c) in any event and at all times to secure the prompt payment of all advances and expenditures made by the Government, with interest, as hereinafter described, and the performance of every covenant and agreement of Borrower contained herein or in any supplementary agreement, Borrower does hereby grant, bargain, sell, convey, mortgage, and assign with general warranty unto the Government

the following property situated in the State of Oregon, County(ies) of KLAMATH



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

PARCEL 1: Township 38 South, Range 11 East of the Willamette Meridian  
Section 31: SE $\frac{1}{4}$ ; SE $\frac{1}{4}$  NE $\frac{1}{4}$   
Section 32: W $\frac{1}{2}$  SW $\frac{1}{4}$ ; SW $\frac{1}{4}$  NE $\frac{1}{4}$

Township 39 South, Range 11 East of the Willamette Meridian  
Section 5: NE $\frac{1}{4}$  NE $\frac{1}{4}$  or Lot 4  
Section 6: NE $\frac{1}{4}$  NE $\frac{1}{4}$  or Lot 1 and that portion of the SE $\frac{1}{4}$  NE $\frac{1}{4}$  lying and being on the North side of the Klamath Falls-Bonanza State Highway

PARCEL 2: Township 38 South, Range 11 East of the Willamette Meridian  
Section 31: SW $\frac{1}{4}$  NE $\frac{1}{4}$

The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. If the land has become or becomes disqualified for the special assessment under the statute, an additional tax may be levied for the years since October 5, 1968, in which the land was subject to the special land use assessment.

Liens and assessments of Klamath Project and Horsefly Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.

Any unpaid charges or assessments of Horsefly Irrigation District.

Easement, for canal or lateral lines executed by Michael Rueck and Emma Rueck, his wife, to the Horsefly Irrigation District, dated March 28, 1918, recorded May 29, 1918 in Deed Volume 49 page 222, records of Klamath County, Oregon.

Right of Way for road and highway purposes executed by Michael Rueck and Emma Rueck, his wife, to Klamath County, Oregon, dated July 8, 1922, recorded April 12, 1924, in Deed Volume 64 page 10, records of Klamath County, Oregon.

Reservations and restrictions in deed from Horsefly Irrigation District, a public corporation, to Fred A. Rueck and Elsa Rueck, husband and wife, dated March 8, 1940, recorded July 12, 1940, in Deed Volume 192 page 139, records of Klamath County, Oregon, as follows: "...reserving unto grantor, its successors, and assigns, right of way for ditches and drains now upon or which it may hereafter elect to construct over and upon said land."

Easement and right to construct, excavate, open and perpetually maintain and open drainage ditch executed by Fred Rueck and Elsa C. Rueck, husband and wife, and Michael Rueck and Emma Rueck, husband and wife, to State of Oregon, by and through its State Highway Commission, dated July 31, 1936, recorded September 15, 1936, in Deed Volume 107 page 212, records of Klamath County, Oregon.

Right of Way for pole and wire line, including the terms and provisions thereof, given by Fred Rueck and Elsa C. Rueck, his wife, and Michael Rueck and Emma Rueck, husband and wife, to The California Oregon Power Company, a California corporation, dated July 13, 1941, recorded August 21, 1941 in Deed Volume 140 page 433, records of Klamath County, Oregon.

Reservations and restrictions in deed from Wm. Irwin, a single man, to H. E. Oberheide and Aline Oberheide, his wife, dated May 12, 1941, recorded May 12, 1941 in Deed Volume 137 page 554, records of Klamath County, Oregon, as follows: "...reserving unto grantor the perpetual right of way and easement for the drain ditch along the Southerly line of said premises. Subject to county roads if any affecting said property."

Right of Way for pole or tower and wire lines, including the terms



Reservations and restrictions in deed from Horsefly Irrigation District, a public corporation, to Fred A. Rueck and Elsa Rueck, husband and wife, dated March 8, 1946, recorded July 12, 1946, in Deed Volume 192 page 139, records of Klamath County, Oregon, as follows: "...reserving unto grantor, its successors, and assigns, right of way for ditches and drains now upon or which it may hereafter elect to construct over and upon said land."

Easement and right to construct, excavate, open and perpetually maintain and open drainage ditch executed by Fred Rueck and Elsa C. Rueck, husband and wife, and Michael Rueck and Emma Rueck, husband and wife, to State of Oregon, by and through its State Highway Commission, dated July 31, 1936, recorded September 15, 1936, in Deed Volume 107 page 212, records of Klamath County, Oregon.

7105

Right of Way for pole and wire line, including the terms and provisions thereof, given by Fred Rueck and Elsa C. Rueck, his wife, and Michael Rueck and Emma Rueck, husband and wife, to The California Oregon Power Company, a California corporation, dated July 13, 1941, recorded August 21, 1941 in Deed Volume 140 page 433, records of Klamath County, Oregon.

Reservations and restrictions in deed from Wm. Irwin, a single man, to H. E. Oberheide and Aline Oberheide, his wife, dated May 12, 1941, recorded May 12, 1941 in Deed Volume 137 page 554, records of Klamath County, Oregon, as follows: "...reserving unto grantor the perpetual right of way and easement for the drain ditch along the Southerly line of said premises. Subject to county roads if any affecting said property."

Right of Way for pole or tower and wire lines, including the terms and provisions thereof, given by Fred Rueck and Elsa Rueck, husband and wife, to The California Oregon Power Company, a California corporation, dated May 6, 1953, recorded May 12, 1953 in Deed Volume 260 page 538, records of Klamath County, Oregon.

Right of Way agreement, including the terms and provisions thereof, given by Horsefly Irrigation District to Pacific Gas Transmission Company, dated August 17, 1960, recorded September 12, 1960 in Deed Volume 324 page 72, records of Klamath County, Oregon.

Right of Way agreement, including the terms and provisions thereof, given by Fred A. Rueck and Elsa C. Rueck, husband and wife and Fred LaVern Rueck, single, grantors, to Pacific Gas Transmission Company, a corporation, dated March 16, 1960, recorded May 23, 1960 in Deed Vol. 321 page 360, records of Klamath County, Oregon.

Notice of Location, including the terms and provisions thereof, given by Pacific Gas Transmission Company, dated September 18, 1961, in Deed Volume 332 page 404, records of Klamath County, Oregon.

No liability is assumed if a financing statement is filed in the office of the County Clerk of Klamath County, Oregon, covering growing crops or fixtures wherein the land is described other than by metes and bounds, the rectangular survey system, or by recorded lot and block.

Mortgage, including the terms and provisions thereof, executed by Fred L. Rueck and Helen Danielle Rueck, husband and wife; Fred L. Rueck, as Guardian for Elsa C. Rueck and incompetent; Alan L. Cain and Darlene Cain, husband and wife, to The Federal Land Bank of Spokane, a corporation, dated April 25, 1973, recorded May 14, 1973 in Volume M73 page 5799, Microfilm records of Klamath County, Oregon, in the amount of \$85,000.

*ABM Epm*

Financing Statement, including the terms and provisions thereof, given by Rolf R. Peterson & Donald B. McCann, doing business as McCann-Peterson Ranches, to First National Bank of Oregon, Klamath Falls Branch, filed October 2, 1973, as Document No. 82090, in Secured Transactions records of Klamath County, Oregon.

7106

together with all rights, interests, easements, hereditaments and appurtenances thereunto belonging, the rents, issues, and profits thereof and revenues and income therefrom, all improvements and personal property now or later attached thereto or reasonably necessary to the use thereof, including, but not limited to, ranges, refrigerators, clothes washers, clothes dryers, or carpeting purchased or financed in whole or in part with loan funds, all water, water rights, and water stock pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein-all of which are herein called "the property";

TO HAVE AND TO HOLD the property unto the Government and its assigns forever in fee simple.

BORROWER for himself, his heirs, executors, administrators, successors and assigns WARRANTS THE TITLE to the property to the Government against all lawful claims and demands whatsoever except any liens, encumbrances, easements, reservations, or conveyances specified hereinabove, and COVENANTS AND AGREES as follows:

(1) To pay promptly when due any indebtedness to the Government hereby secured and to indemnify and save harmless the Government against any loss under its insurance of payment of the note by reason of any default by Borrower. At all times when the note is held by an insured holder, Borrower shall continue to make payments on the note to the Government, as collection agent for the holder.

(2) To pay to the Government such fees and other charges as may now or hereafter be required by regulations of the Farmers Home Administration.

(3) If required by the Government, to make additional monthly payments of 1/12 of the estimated annual taxes, assessments, insurance premiums and other charges upon the mortgaged premises.

(4) Whether or not the note is insured by the Government, the Government may at any time pay any other amounts required herein to be paid by Borrower and not paid by him when due, as well as any costs and expenses for the preservation, protection, or enforcement of this lien, as advances for the account of Borrower. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.

(5) All advances by the Government as described in this instrument, with interest, shall be immediately due and payable by Borrower to the Government without demand at the place designated in the latest note and shall be secured hereby. No such advance by the Government shall relieve Borrower from breach of his covenant to pay. Such advances, with interest, shall be repaid from the first available collections received from Borrower. Otherwise, any payment made by Borrower may be applied on the note or any indebtedness to the Government secured hereby, in any order the Government determines.

(6) To use the loan evidenced by the note solely for purpose authorized by the Government.

(7) To pay when due all taxes, liens, judgments, encumbrances, and assessments lawfully attaching to or assessed against the property, including all charges and assessments in connection with water, water rights, and water stock pertaining to or reasonably necessary to the use of the real property described above, and promptly deliver to the Government without demand receipts evidencing such payments.

7107

(8) To keep the property insured as required by and under insurance policies approved by, delivered to, and retained by the Government.

(9) To maintain improvements in good repair and make repairs required by the Government; operate the property in a good and husbandmanlike manner; comply with such farm conservation practices and farm and home management plans as the Government from time to time may prescribe; and not to abandon the property, or cause or permit waste, lessening or impairment of the security covered hereby, or, without the written consent of the Government, cut, remove, or lease any timber, gravel, oil, gas, coal, or other minerals except as may be necessary for ordinary domestic purposes.

(10) To comply with all laws, ordinances, and regulations affecting the property.

(11) To pay or reimburse the Government for expenses reasonably necessary or incidental to the protection of the lien and priority hereof and to the enforcement of or the compliance with the provisions hereof and of the note and any supplementary agreement (whether before or after default), including but not limited to costs of evidence of title to and survey of the property, costs of recording this and other instruments, attorneys' fees, trustees' fees, court costs, and expenses of advertising, selling, and conveying the property.

(12) Neither the property nor any portion thereof or interest therein shall be assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. The Government shall have the sole and exclusive rights as mortgagee hereunder, including but not limited to the power to grant consents, partial releases, subordinations, and satisfaction, and no insured holder shall have any right, title or interest in or to the lien or any benefits hereof.

(13) At all reasonable times the Government and its agents may inspect the property to ascertain whether the covenants and agreements contained herein or in any supplementary agreement are being performed.

(14) The Government may extend and defer the maturity of and renew and reamortize the debt evidenced by the note or any indebtedness to the Government secured hereby, release from liability to the Government any party so liable thereon, release portions of the property from and subordinate the lien hereof, and waive any other rights hereunder, without affecting the lien



times when the note is held by an insured holder, Borrower shall continue to make payments on the note to the Government, as collection agent for the holder.

(2) To pay to the Government such fees and other charges as may now or hereafter be required by regulations of the Farmers Home Administration.

(3) If required by the Government, to make additional monthly payments of 1/12 of the estimated annual taxes, assessments, insurance premiums and other charges upon the mortgaged premises.

(4) Whether or not the note is insured by the Government, the Government may at any time pay any other amounts required herein to be paid by Borrower and not paid by him when due, as well as any costs and expenses for the preservation, protection, or enforcement of this lien, as advances for the account of Borrower. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.

(5) All advances by the Government as described in this instrument, with interest, shall be immediately due and payable by Borrower to the Government without demand at the place designated in the latest note and shall be secured hereby. No such advance by the Government shall relieve Borrower from breach of his covenant to pay. Such advances, with interest, shall be repaid from the first available collections received from Borrower. Otherwise, any payment made by Borrower may be applied on the note or any indebtedness to the Government secured hereby, in any order the Government determines.

(6) To use the loan evidenced by the note solely for purpose authorized by the Government.

(7) To pay when due all taxes, liens, judgments, encumbrances, and assessments lawfully attaching to or assessed against the property, including all charges and assessments in connection with water, water rights, and water stock pertaining to or reasonably necessary to the use of the real property described above, and promptly deliver to the Government without demand receipts evidencing such payments.

7107

(8) To keep the property insured as required by and under insurance policies approved by, delivered to, and retained by the Government.

(9) To maintain improvements in good repair and make repairs required by the Government; operate the property in a good and husbandmanlike manner; comply with such farm conservation practices and farm and home management plans as the Government from time to time may prescribe; and not to abandon the property, or cause or permit waste, lessening or impairment of the security covered hereby, or, without the written consent of the Government, cut, remove, or lease any timber, gravel, oil, gas, coal, or other minerals except as may be necessary for ordinary domestic purposes.

(10) To comply with all laws, ordinances, and regulations affecting the property.

(11) To pay or reimburse the Government for expenses reasonably necessary or incidental to the protection of the lien and priority hereof and to the enforcement of or the compliance with the provisions hereof and of the note and any supplementary agreement (whether before or after default), including but not limited to costs of evidence of title to and survey of the property, costs of recording this and other instruments, attorneys' fees, trustees' fees, court costs, and expenses of advertising, selling, and conveying the property.

(12) Neither the property nor any portion thereof or interest therein shall be assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. The Government shall have the sole and exclusive rights as mortgagee hereunder, including but not limited to the power to grant consents, partial releases, subordinations, and satisfaction, and no insured holder shall have any right, title or interest in or to the lien or any benefits hereof.

(13) At all reasonable times the Government and its agents may inspect the property to ascertain whether the covenants and agreements contained herein or in any supplementary agreement are being performed.

(14) The Government may extend and defer the maturity of and renew and reamortize the debt evidenced by the note or any indebtedness to the Government secured hereby, release from liability to the Government any party so liable thereon, release portions of the property from and subordinate the lien hereof, and waive any other rights hereunder, without affecting the lien or priority hereof or the liability to the Government of Borrower or any other party for payment of the note or indebtedness secured hereby.

(15) If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a production credit association, a Federal land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, upon the Government's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such loan.

(16) Default hereunder shall constitute default under any other real estate or crop or chattel security instrument held or insured by the Government and executed or assumed by Borrower, and default under any such other security instrument shall constitute default hereunder.

(17) SHOULD DEFAULT occur in the performance or discharge of any obligation secured by this instrument, or should any one of the parties named as Borrower die or be declared an incompetent, a bankrupt, or an insolvent, or make an assignment for the benefit of creditors, the Government, at its option, with or without notice, may: (a) declare the entire amount unpaid under the note and any indebtedness to the Government hereby secured immediately due and payable, (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of and take possession of, operate or rent the property, (c) upon application by it and production of this instrument, without other evidence and without notice of hearing of said application, have a receiver appointed for the property, with the usual powers of receivers in like cases, (d) foreclose this instrument as provided herein or by law, and (e) enforce any and all other rights and remedies provided herein or by present or future law.

(18) The proceeds of foreclosure sale shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions hereof, (b) any prior liens required by law or a competent court to be so paid, (c) the debt evidenced by the note and all indebtedness to the Government secured hereby, (d) inferior liens of record required by law or a competent court to be so paid, (e) at the Government's option, any other indebtedness of Borrower owing to or insured by the Government, and (f) any balance to Borrower. At foreclosure or other sale of all or any part of the property, the Government and its agents may bid and purchase as a stranger and may pay the Government's share of the purchase price by crediting such amount on any debts of Borrower owing to or insured by the Government, in the order prescribed above.

(19) As against the debt evidenced by the note and any indebtedness to the Government hereby secured, with respect to the property, Borrower (a) hereby relinquishes, waives, and conveys all rights, inchoate or consummate, of descent, dower, curtesy, homestead, valuation, appraisal, and exemption, to which Borrower is or becomes entitled under the laws and constitution of the jurisdiction where the property lies, and (b) hereby agrees that any right provided by such laws or constitution for redemption or possession following foreclosure sale shall not apply, and that no right of redemption or possession shall exist after foreclosure sale.

(20) If any part of the loan for which this instrument is given shall be used to finance the purchase, construction or repair of property to be used as an owner-occupied dwelling (herein called "the dwelling") and if Borrower intends to sell or rent the dwelling and has obtained the Government's consent to do so (a) neither Borrower nor anyone authorized to act for him will, after receipt of a bona fide offer, refuse to negotiate for the sale or rental of the dwelling or will otherwise make unavailable or deny the dwelling to anyone because of race, color, religion or national origin, and (b) Borrower recognizes as illegal and hereby disclaims, and will not comply with or attempt to enforce any restrictive covenants on the dwelling relating to race, color, religion, or national origin.



7108

(21) This instrument shall be subject to the present regulations of the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

(22) Notices given hereunder shall be sent by certified mail, unless otherwise required by law, addressed, unless and until some other address is designated in a notice so given, in the case of the Government to Farmers Home Administration, United States Department of Agriculture, at Portland, Oregon 97205, and in the case of Borrower to him at his post office address stated above.

(23) If any provision of this instrument or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid provision or application, and to that end the provisions hereof are declared to be severable.

WITNESS the hand(s) of Borrower the day and year first above written.

*Donald B. McCann*  
*Elizabeth J. McCann*

ACKNOWLEDGMENT  
FOR OREGON

STATE OF OREGON

COUNTY OF Klamath

On this 10th day of June, 19 74, personally appeared the above-named

Donald B. McCann and Elizabeth J. McCann, akd Elizabeth Jean McCann  
husband and wife,

and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

[NOTARIAL SEAL]

*John D. Goehner*

Notary Public

My Commission expires 11/25/76

STATE OF OREGON, COUNTY OF KLAMATH, ss.

Filed for record at request of KLAMATH COUNTY TITLE CO

this 10th day of JUNE, A. D. 1974 at 2:57 o'clock PM, and

fully recorded in Vol. M 71, of MORTGAGES on Page 7103

FILE \$ 12.00

W. D. MILNE, County Clerk

By *W. D. Milne*

Return: Farmers Home Administration  
P.O. Box 1328, City 97601