

TC

3115

by

to

Mortgagor,

Mortgagee,

WITNESSETH

That said mortgagor, in consideration of

One hundred five thousand

two hundred eighty and 95/100

Dollars, to him paid by said mortgagee, does hereby

grant, bargain, sell and convey unto said mortgagee, his heirs, executors, administrators and assigns, that certain real property situated in

Klamath County, State of Oregon, bounded and described as follows, to-wit:

PARCEL 1:

The E½NE¼ of Section 15 Township 39 South, Range 11 East of the

Willamette Meridian;

SAVING AND EXCEPTING Beginning at a point on the North line of

said Section 15 at a point 531 feet West of the Northeast corner

thereof; thence West along said North line to the Northwest corner

of the NE¼NE¼ of said section; thence South along the West line

of said NE¼NE¼ a distance of 185 feet to a point; thence East parallel

to the North line of said section a distance of 739 feet, more

or less, to a point on the West line of parcel conveyed to Lost

River Cemetery Association, Inc., by deed Vol. 236, page 572, thence

North along the West line of said parcel to the point of beginning.

ALSO SAVING AND EXCEPTING from the above described parcel that

portion thereof conveyed to Lost River Cemetery Association, Inc.,

by deed recorded December 16, 1949, in Deed Volume 236 page 572,

records of Klamath County, Oregon.

(for continuation of this document see attached Exhibit "A" and by this

reference incorporated herein as if fully set forth)

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 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 the said mortgagee, his

heirs, executors, administrators and assigns forever.

This mortgage is intended to secure the payment of a promissory note, of which the

following is a substantial copy:

\$ 105,280.95

Klamath Falls, Oregon

1979

I (or if more than one maker) we, jointly and severally, promise to pay to the order of Steven C. Josse and

Mary A. Josse, husband and wife, c/o Klamath County Title Company

and upon the death of any of them, then to the order of the survivor of them, at 422 Main Street, Klamath Falls,

One hundred five thousand two hundred eighty and 95/100

DOLLARS,

with interest thereon at the rate of 9½ percent per annum from 1979, until paid, payable in

two installments, at the dates and in the amounts as follows: first payment of \$43,000.00

including interest at the rate of 9½ per annum from 1979,

of principal and interest; the full balance plus interest at 9½ per annum

due and payable on or before April 1, 1981. No prepayment prior to January

1, 1980, on this note;

balloon payments, if any, will not be refinanced; interest to be paid annually and in addition to the payments above re-

quired; said payments shall continue until the whole sum hereof, principal and interest, has been paid; if any of said installments is not

so paid, all principal and interest shall 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, I/we promise and agree to pay the reasonable attorney's fees and collection costs of the holder

hereof, and if suit or action is filed hereon, also promise to pay: (1) holder's reasonable attorney's fees to be fixed by the trial court and (2)

if any appeal is taken from any decision of the trial court, such further sum as may be fixed by the appellate court, as the holder's rea-

sonable attorney's fees in the appellate court.

It is the intention of the parties hereto that the said payee do not take the title hereto as tenants in common but with the right

of survivorship, that is: on the death of any of the payees, the right to receive payment of the then unpaid balance of principal and in-

terest shall vest absolutely in the survivor of them.

This note secures a Fourth Mortgage

of even date.

Prepayment on and after January 1, 1980.

The date of maturity of the debt secured by this mortgage is the date on which the last scheduled principal payment be-

comes due, to-wit: April 1, 1981.

And said mortgagor covenants to and with the mortgagee, his heirs, executors, administrators and assigns, that he is lawfully

seized in fee simple of said premises and has a valid, unencumbered title thereto EXCEPT as set forth on the

attached Exhibit "A"; that he will pay said note, principal and interest, according to

the terms thereof; that while any part of said note remains unpaid he 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 pay-

able; and before the same may become delinquent, that he will promptly pay and satisfy any and all liens or encumbrances that

are or may become liens on the premises or any part thereof superior to the lien of this mortgage; that he will keep the buildings

now on or which hereafter may be erected on the said premises continuously insured against loss or damage by fire and such other

hazards as the mortgagee may from time to time require, in an amount not less than the original principal sum of the note or

obligation secured by this mortgage, in a company or companies acceptable to the mortgagee, with loss payable first to the mort-

gagee and then to the mortgagor as their respective interests may appear; all policies of insurance shall be delivered to the mort-

gagee as soon as insured. Now if the mortgagor shall fail for any reason to procure any such insurance and to deliver said policies

to the mortgagee at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on said buildings,

the mortgagee may procure the same at mortgagor's expense; that he will keep the buildings and improvements on said premises

in good repair and will not commit or suffer any waste of said premises. At the request of the mortgagee, the mortgagor shall

join with the mortgagee in executing one or more financing statements pursuant to the Uniform Commercial Code, in form satis-

factory to the mortgagee, and will pay for filing the same in the proper public office or offices, as well as the cost of all lien

searches made by filing officers or searching agencies as may be deemed desirable by the mortgagee.

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mortgagee warrants that the proceeds of the loan represented by the above described note and this mortgage are:

(a) primarily for mortgagee's personal, family, household or agricultural purposes (see Important Notice below);

(b) for an organization or (even if mortgagee is a natural person) are for business or commercial purposes other than agricultural purposes.

Now, therefore, if said mortgagor 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 mortgagor shall fail to pay any taxes or charges or any lien, encumbrance or insurance premium as above provided for, the mortgagee may at his 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 mortgagor neglects to repay any sums so paid by the mortgagee. In the event of any suit or action being instituted to foreclose this mortgage, the mortgagor agrees 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 mortgagor further promises to pay such sum as the 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 mortgagor 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.

In construing this mortgage, it is understood that the mortgagor or mortgagee may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, said mortgagor has hereunto set his hand the day and year first above written.

Merle R. Whiton
Virginia P. Whiton

IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; if warranty (a) is applicable and if the mortgage is a creditor, on such word is defined in the Truth-in-Lending Act and Regulation Z, the mortgagee MUST comply with the Act and Regulation by making required disclosures; for this purpose, if the instrument is to be a FIRST lien to finance the purchase of a dwelling, use Stevens-Ness Form No. 1305 or equivalent; if this instrument is NOT to be a first lien, use Stevens-Ness Form No. 1306, or equivalent.

MORTGAGE

(FORM No. 106A)

TO

STATE OF OREGON,

County of

I certify that the within instrument was received for record on the day of at o'clock P.M., and recorded in book on page of as file number. Record of Mortgages of said County. Witness my hand and seal of County affixed.

Title.

By

Deputy.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

STATE OF OREGON,

County of Klamath

BE IT REMEMBERED, That on this 10 day of April, 1979, before me, the undersigned, a notary public in and for said county and state, personally appeared the within named Merle R. Whiton and Virginia P. Whiton, husband and wife,

known to me to be the identical individual s. described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for Oregon.

My Commission expires

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EXCEPTING from the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 Township 39 South, Range 11 East of the Willamette Meridian the following: Beginning at a point on the South line of the Bonanza-Lorella County Road which is 742 feet East along said line from the West line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 Twp. 39 S.R. 11 E.W.M.; thence continuing East along said line a distance of 448 feet; thence South 140 feet; thence West 448 feet, more or less, to a point due South of the point of beginning; thence North 140 feet, more or less, to the point of beginning.

That portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ lying Southwesterly of the Bonanza-Lorella County Road and all of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{4}$ of Section 14 Township 39 South, Range 11 East of the Willamette Meridian. EXCEPTING the East 1200 feet of the South 330 feet of the SE $\frac{1}{4}$ SE $\frac{1}{4}$.

The NW $\frac{1}{4}$, W $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NE $\frac{1}{4}$, EXCEPTING the East 1200 feet of said NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, Township 39 South, Range 11 East of the Willamette Meridian.

Subject, however, to the following:

1. The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm Land. Taxes for the year 1978-79 and possibly prior years have been deferred pursuant to ORS 308.370 to 308.403. These, plus earned interest are due and payable when said reason for the deferment no longer exists.
2. Acreage and use limitations under provisions of the United States Statutes and regulations issued thereunder.
3. Liens and assessments of Klamath Project and Horsefly Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.
4. Liens or assessments, if any, of the City of Bonanza, for municipal improvements on that portion of the herein described property lying within the city limits of said city.
5. Rights of the Federal Government, the State of Oregon, and the general public in any portion of the herein described premises lying below the high water line of Lost River.
6. Right of way for transmission line, including the terms and provisions thereof, given by Herbert Longton and Gertrude Dowquill Longton, husband and wife, to The California Oregon Power Company, a California corporation dated January 7, 1941, recorded January 31, 1941, in Deed Volume 135, page 171, Records of Klamath County, Oregon. Covers Lot 7 of Riverside Tracts.
7. Right of way for transmission line, including the terms and provisions thereof, given by Mattie J. Nichols and B. F. Nichols, her husband, to The California Oregon Power Company, a California corporation, dated January 7, 1941, recorded January 31, 1941, in Deed Volume 135 page 175, records of Klamath County, Oregon. Affects SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11.
8. Right of way for transmission line, including the terms and provisions thereof, given by Otto C. Freese and Artie Nichols Freese, his wife, to The California Oregon Power Company, a California corporation, dated January 16, 1941, recorded January 31, 1941, in Deed Volume 135 page 177, records of Klamath County, Oregon. Affects NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14.
9. Right of way for transmission line, including the terms and provisions thereof, given by Horsefly Irrigation District, to The California Oregon Power Company, a California corporation, dated June 10, 1941, recorded July 2, 1941, in Deed Volume 139 page 195, records of Klamath County, Oregon. Affects NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15.
10. Right of way for transmission line, including the terms and provisions thereof, given by Ruby Brown et al., to The California Oregon Power Company, a California corporation, dated June 18, 1951, recorded June 28, 1951, in Deed Volume 248 page 249, records of Klamath County, Oregon. Affects SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11.
11. Right of way for transmission line, including the terms and provisions thereof, given by J. E. Whitlatch and Nellie C. Whitlatch, husband and wife, to The California Oregon Power Company, a California corporation, dated September, 1953, recorded October 5, 1953, in Deed Volume 263, page 261, records of Klamath County, Oregon. Affects Lots 7, 8 and 9 of Riverside Tracts and NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14.
12. Transmission line and access road easement, including the terms and provisions thereof, given by Ray C. McKray and Linda McKray, husband and wife, to United States of America, dated February 9, 1966, recorded February 18, 1966, in Deed Volume M66 page 1413 and re-recorded March 29, 1966, in Deed Volume M66 page 2735, records of Klamath County, Oregon. Affects SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 14 and W $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23.

13. Electric Transmission line easement, including the terms and provisions thereof, given by Ray C. McKray and Linda McKray, husband and wife, to Portland General Electric Company, an Oregon corporation, dated April 19, 1966, recorded April 21, 1966, in Deed Volume M66 page 8550, records of Klamath County, Oregon. Affects SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 14 and W $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23
14. Mortgage, including the terms and provisions thereof, executed by Steve Josse and Mary Ann Josse, husband and wife, to The State of Oregon, represented and acting by the Director of Veterans' Affairs, dated August 29, 1977, recorded August 30, 1977, in Mortgage Volume M77, page 15996, records of Klamath County, Oregon, to secure the payment of a promissory note dated August 29, 1977, in the amount of \$125,000.00, which mortgage Mortgagors herein hereby assume and agree to pay according to its terms and also hereby assume the obligation of Steve Josse and Mary Ann Josse, husband and wife, under the terms of the instrument creating the loan to indemnify the VA to the extent of any claim payment arising from the guaranty or insurance of the indebtedness above-mentioned, and consents to their release from their obligations under the loan instruments. The present balance due and owing is \$151,385.22 with interest paid to 12-29-78, to The State of Oregon, represented and acting by the Director of Veterans' Affairs.
15. Mortgage, including the terms and provisions thereof, executed by Steve Josse and Mary Ann Josse, husband and wife, to the State of Oregon, represented and acting by the Director of Veterans' Affairs, dated August 22, 1978, recorded August 22, 1978, in Volume M78, page 18601, Microfilm Records of Klamath County, Oregon, to secure the payment of a promissory note dated August 22, 1978, in the amount of \$26,042.00, which mortgage Mortgagors herein hereby assume and agree to pay according to its terms and also hereby assume the obligation of Steve Josse and Mary Ann Josse, husband and wife, under the terms of the instrument creating the loan to indemnify the VA to the extent of any claim payment arising from the guaranty or insurance of the indebtedness above-mentioned, and consents to their release from their obligations under the loan instruments. The present balance due and owing is enclosed in a box with interest paid to wa, to The State of Oregon, represented and acting by the Director of Veterans' Affairs.
16. Mortgage, including the terms and provisions thereof, executed by Steven C. Josse, aka Steve Josse and Mary Ann Josse, husband and wife, to Dan N. McDonald and Evelyn L. McDonald, husband and wife, dated August 29, 1977, recorded August 30, 1977, in Volume M77, page 15999, Microfilm Records of Klamath County, Oregon, to secure the payment of \$37,000.00.
By Agreement dated July 15, 1978, recorded August 22, 1978, in Volume M78, page 18608, Microfilm Records of Klamath County, Oregon, the lien of the above mortgage was subordinated to the mortgage shown as Exception No. 19 above, which Mortgage Mortgagors herein agree to assume and pay, the present balance due and owing is \$9-29-78 with interest paid to 13437.39 to Dan N. McDonald and Evelyn L. McDonald, husband and wife.
17. Mortgage, including the terms and provisions thereof, executed by Steven C. Josse and Mary Ann Josse, husband and wife, to the United States of America, acting through the Farmers Home Administration, dated March 15, 1978, recorded March 15, 1978, in Volume M78, page 6971, Microfilm Records of Klamath County, Oregon, to secure the payment of \$54,000.00, which mortgage Mortgagors herein hereby assume and agree to pay according to its terms and also hereby assume the obligation of Steve C. Josse and Mary Ann Josse, husband and wife, under the terms of the instrument creating the loan to indemnify the VA to the extent of any claim payment arising from the guaranty or insurance of the indebtedness above-mentioned, and consents to their release from their obligations under the loan instruments. The present balance due and owing is \$53,896.44 with interest paid to 12/18/78, to The State of Oregon, represented and acting by the Director of Veterans' Affairs.

It is further agreed by and between Mortgagors and Mortgagees that the additional terms and conditions as set forth herein shall be part of the terms of the Mortgage.

1. Mortgagors to receive possession of the farmground and dry hill pasture land upon close of escrow.
2. Mortgagors to receive possession of the bunk house on April 15, 1979, shop building, and fuel storage building and tanks upon close of escrow.
3. Notice shall be served to tenants in the guest house upon closing and Mortgagors shall receive possession as soon as tenants move out, but not later than 30 days after eviction notice is served.
4. Mortgagees to have possession of the feedlot area until May 15, 1979.
5. Mortgagees may store hay and grain crops now stored on the premises until May 15, 1979.
6. Mortgagees to retain possession of the main ranch house until the end of the 1978-1979 school year in June.
7. Insurance on the buildings to be prorated as of possession date on the main ranch house.
8. Mortgagees agree to finish siding the main house and the adjacent walk-in cooler and storage room.
9. Mortgagors acknowledge that there is a rental agreement with Rajnus Brothers for 32 acres of potato ground for 1979 which shall be assumed by Mortgagors herein.
10. Mortgagors and Mortgagees agree to split the compensation forthcoming from Pacific Power and Light Company in the approximate amount of \$5900.

Mortgagors herein expressly covenant and agree to pay or see to the payment of the said prior Mortgages set forth herein, and to prevent any default thereunder, and further agrees that should any default be made in the payment of any installment of principal and interest on the prior Mortgages, and should any such installment of principal and interest remain unpaid and in arrears for a period of 30 days, or should any suit be commenced or other action taken to foreclose the prior Mortgage, then the amount secured by this Fourth Mortgage shall become due and payable in full at any time thereafter, at the option of the holder of this Fourth Mortgage and the Note secured thereby.

Should the Mortgagors sell, convey or alienate said property or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntary or involuntary, without the written consent of the Mortgagees herein being first had and obtained, Mortgagees shall have the right, at its option to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

It is hereby agreed between the Mortgagors and Mortgagees hereto that Mortgagors shall have no right of redemption if this Fourth Mortgage is foreclosed.

ALLOCATION OF PURCHASE PRICE:

The parties mutually agree that for all purposes the total purchase price shall be allocated as follows:

1. Real Property - - - - - \$360,000.00
2. Personal Property - - - - - \$ 54,000.00

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Mortgagors herein agree with Mortgagees that there shall be no prepayment of this Fourth Mortgage prior to January 1, 1980. On and after said date, Mortgagors shall have the privilege of prepaying this Fourth Mortgage without penalty.

Mortgagors agree to complete the processing of the loan application with Federal Land Bank immediately upon the sale of their forty (40) acre parcel in Madera, California, and further agree to make written application to other institutional lenders in the event the 40 acres does not sale during 1979.

Mortgagors agree to exert every effort to procure new financing and will close said new loan as soon as possible after January 1, 1980.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Klamath County Title Co.

this 11th day of April A. D. 19 79 at 10:40 o'clock A. M., and

legally recorded in Vol. 479, of Mortgages on Page 7929

Wm D. MILNE, County Clerk

Bernetha Kelsch

Fee \$.8.00

EXHIBIT "B"