

K-32309

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Vol. <sup>m</sup>79 Page 21407

MORTGAGE ON REAL PROPERTY

THIS MORTGAGE is made this 1 day of SEPTEMBER, 1979, by RICHARD D. LYON and JEANNIE LYON, husband and wife (Lyon), Mortgagors, and DONALD G. MICKA and ELSIE MICKA, husband and wife (Micka), Mortgagees.

1. Property: Lyon hereby mortgages to Micka the following described real property situated in Klamath County, Oregon (hereafter the Property), including all buildings and improvements thereon and all irrigation equipment, including lines and pumps used in connection with the Property:

The SW 1/4 NE 1/4, and the SE 1/4 NW 1/4 of Section 5, Township 41 South, Range 11 East of the Willamette Meridian.

2. Promissory Note: This Mortgage is intended to secure the payment of a promissory note in the amount of \$175,000, a true copy of which is attached hereto as Exhibit "A". The final payment of principal and interest on said promissory note, if not sooner paid, is due and payable on November 30, 1979.

3. Warranty of Title: Lyon warrants that they have a valid, unencumbered title to the Property excepting those easements and restrictions listed in Exhibit "B" attached hereto.

79 SEP 7 PM 4 11

4. Covenants of Mortgagor: Lyon promises that they will:

a) Pay the note secured by this mortgage according to its terms;

b) Pay all taxes, assessments and other charges which may be levied or assessed against the Property when due;

c) Promptly discharge any liens against the property which are superior to the lien of this Mortgage. In the event that Lyon shall fail to pay any sum due upon such prior lien promptly when due, Micka may pay the same and Lyon shall reimburse Micka the amount thereof upon demand. As an alternative, Micka may add the amount thereof to the debt secured by this Mortgage and the same shall bear interest at the rate specified in the note. However, the exercise of either of these options by Micka shall not be deemed a waiver of any right arising by reason of Lyon's breach of this Mortgage.

d) Keep the buildings and other improvements now existing or which hereafter may be placed on the Property insured against fire and other casualties with extended coverage endorsements. The policy shall be written to the full replacement value with loss payable to Micka and Lyon as their interests may appear. Certificates evidencing the policies shall be delivered to Micka within

21409

10 days of the date hereof and shall contain a stipulation providing that coverage will not be canceled or diminished without a minimum of 10 days written notice to Micka.

e) Keep the building and improvements on the Property in good repair and not commit or suffer any waste thereof.

5. Default: Time is of the essence of this Mortgage. In the event Lyon shall default in the payment of any sum due under the terms of the note or in the performance of any covenant of this Mortgage, Micka shall give Lyon written notice specifying said default. If, within 10 days after receipt of such notice, Lyon fails to make said payment or perform or commence performance of such covenant, Micka shall have the right to declare the entire unpaid balance of the note immediately due and payable and pursue all available remedies provided by law.

6. Costs and Attorney Fees: In the event suit or action is instituted to foreclose this Mortgage, Lyon agrees to pay such sum as the court may adjudge reasonable as attorney fees at trial or on appeal of such suit or action in addition to all reasonable costs incurred by Micka for title search and reports and all other sums provided by law.

7. Eminent Domain: In the event that all or any portion of said Property shall be taken by eminent domain, Micka shall have the right to require that all or any portion of the moneys payable as compensation for such taking, in excess of the amount required

21410

to pay reasonable costs and attorney fees incurred by Lyon in such proceedings, shall be paid to Micka and applied first to any costs and expenses necessarily paid or incurred by Micka in such proceedings. The balance shall be applied against the payments last becoming due on the note.

8. Insurance Proceeds: If the Property is damaged because of fire or other risk covered by insurance, Lyon shall apply the proceeds of said insurance against the cost of repair. Any amount not required for said purpose shall be paid to Micka and applied against the payments last becoming due on the note. If said insurance proceeds shall be insufficient for such repairs, Lyon shall pay the difference. If damage to the improvements is so extensive as to constitute total destruction so that repair is not feasible, the insurance proceeds shall be paid to Micka and applied against the payments last becoming due on the note, and any excess over the balance thereof shall be paid to Lyon.

In the event that Lyon shall fail to file any proof of loss or to endorse any check, draft or warrant payable to Lyon arising from such loss, Lyon hereby names and constitutes Micka their attorney-in-fact to make such proof of loss and to endorse such check, draft or warrant and apply the proceeds as provided herein.

9. Waiver: Lyon agrees that failure of Micka at any time to require performance by Lyon of any provision of this Mort-



21411

gage or note, shall in no way affect Micka's right hereunder to enforce the same, nor shall any waiver by Micka or any breach of any provision hereof be held to be a waiver of the provision itself or any other provision.

10. Benefit: All of the covenants and agreements herein shall apply to and bind the heirs, successors and assigns of Lyon and Micka.

11. Notice: Any notice in connection with this Mortgage shall be in writing and shall be effective when actually delivered or when deposited in the mail, registered or certified, addressed to the parties at the addresses set forth below or such other addresses as either party may designate by written notice to the other:

E-Z-D Farms, Inc.  
P.O. Box 57  
Malin, Oregon 97632

Richard D. and Jeannie Lyon  
Star Route Box 23  
Merrill, Ore. 97633

IN WITNESS WHEREOF, Lyon has signed this Mortgage agreement on the day and year first above written.

Richard D. Lyon  
RICHARD D. LYON

Jeannie Lyon  
JEANNIE LYON

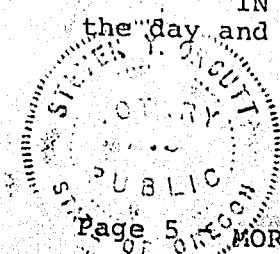
STATE OF OREGON )  
                          ) ss.  
County of Klamath )

On this 7 day of September 1979, before me appeared the within named RICHARD D. LYON and JEANNIE LYON, who are known to me to be the identical individuals described in and who executed the same freely and voluntarily.

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

Notary Public  
NOTARY PUBLIC FOR OREGON

My Commission Expires: 8/29/81



MORTGAGE ON REAL PROPERTY

21412

PROMISSORY NOTE

\$175,000

September 7, 1979  
Klamath Falls, Oregon

FOR VALUE RECEIVED, RICHARD D. LYON and JEANNIE LYON, husband and wife (Lyon), jointly and severally hereby promise to pay DONALD G. MICKA and ELSIE MICKA (Micka) or their order, the principal sum of \$175,000 plus interest at the rate of 8 1/2 percent per annum due November 30, 1979.

This note may be prepaid in whole or part, at any time without penalty.

If this note is not paid when due and is placed in the hands of an attorney for collection, Lyon promises and agrees to pay any fees incurred by Micka in enforcing Lyon's obligations under this note, whether or not a suit or action is commenced. If a suit or action is filed, the amount of such attorney fees shall be fixed by the court or courts in which the suit or action, including any appeal therein, is decided.

Lyon and all endorsers, sureties, and guarantors hereof, hereby jointly and severally waive presentment, demand for payment, notice of dishonor, notice of protest, and protest, and all other notices or demands in connection with the delivery, acceptance, performance, default, endorsement, or guaranty of this instrument.

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RICHARD D. LYON

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JEANNIE LYON

EASEMENTS AND RESTRICTIONS

21413

1. Liens and assessments of Klamth Project and Klamath Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.
2. Easement, including the terms and provisions thereof, dated June 18, 1962, recorded July 13, 1962, in Deed Volume 338, page 636, records of Klamath County, Oregon, to Klamath Basin Improvement District for perpetual easement for drain ditch.
3. Agreement, including the terms and provisions thereof, dated January 4, 1972, recorded January 6, 1972, in Volume M-72, page 166, Microfilm records of Klamath County, Oregon, between Klamath Irrigation District and Louisa A. Icenbice et ux for relocation of G-3 Lateral.
4. Easement, including the terms and provisions thereof, recorded January 6, 1972, in Volume M-72, page 172, Microfilm records of Klamath Irrigation District for permanent easement for relocated G-3 Lateral.
5. Easement, including the terms and provisions thereof, given by Rodney Lyon and Marie Lyon, to Klamath Basin Improvement District, dated September 5, 1973 and recorded September 11, 1973, in Microfilm M-73 on page 12218, records of Klamath County, Oregon.
6. Right of Way Easement, including the terms and provisions thereof, given by Rod Lyon and Marie Lyon to Pacific Power & Light Company, a corporation, dated September 29, 1973, and recorded October 24, 1973 in Microfilm M-73 on page 14287, records of Klamath County, Oregon.

Return to:  
F. C. Calkins & Orndorff  
1763 Washburn  
City  
Dave Stokes  
to: Mortgage  
Star Rt. Box 23  
Merrill, Oregon 97633

STATE OF OREGON; COUNTY OF KLAMATH; ss.  
Filed for record at request of Klamath County Title Co.  
this 7th day of September A. D. 1979 at 20 o'clock P M., or  
fully recorded in Vol. M79, of Mortgages on Page 21407  
Wm D. MILNE, County Clerk  
By Bernetha H. Helvick  
Fee \$24.50

Easements and Restrictions - Exhibit "B"