

TC

SECOND
THIS MORTGAGE, Made this 22 day of February, 1980,
by John A. Davidson and Jo Ann Davidson, husband and wife,
to James A. Bingham and Bernadine K. Bingham, husband and wife,

Mortgagor,
Mortgagee,
WITNESSETH, That said mortgagor, in consideration of Seventeen thousand eight hundred two and 09/100 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:

A tract of land situated in Section 5, Township 40 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being more particularly described as follows:

Beginning at the most Northwesterly corner of a tract of real property, which corner lies at the intersection of the Easterly right of way boundary of the Burlington Northern Inc. railroad and the Easterly right of way boundary of U.S. G-1 Lateral irrigation canal; thence along said irrigation canal right of way boundary as follows: North $41^{\circ}29'30''$ West 383.44 feet; thence North $78^{\circ}16'00''$ East 311.64 feet to a $\frac{1}{2}$ " galvanized iron pipe marking the true point of beginning; thence continuing along above said canal right of way boundary North $35^{\circ}58'00''$ East 478.25 feet, more or less, to the Southerly right of way boundary of U.S. G canal; thence along said boundary as follows: South $56^{\circ}23'30''$ East 223.80 feet;

(See attached Exhibit "A" and by this reference incorporated herein as if fully set forth herein.)

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:

\$ 17,650.00 Klamath Falls, Oregon, February 22, 1980.

I (or if more than one maker) we, jointly and severally, promise to pay to the order of James A. Bingham and Bernadine K. Bingham, husband and wife,

Seventeen thousand six hundred fifty and no/100 DOLLARS, at Tri-City Bank, Junction City, Oregon

with interest thereon at the rate of 10 $\frac{1}{2}$ per cent. per annum from February 22, 1980, until paid, principal and interest payable in monthly installments of not less than \$240.21 in any one payment; each payment as made

shall be applied first to accumulated interest and the balance to principal; the first payment to be made on the 22nd day of March, 1980, and a like payment on the 22nd day of each month thereafter until

March 22, 1985, when the whole unpaid balance hereof, if any, shall become due and payable; if any of said installments is 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, 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 reasonable attorney's fees in the appellate court.

Prepayment without penalty.

This Note secures a Second

Mortgage of even date.

/s/ John A. Davidson

John A. Davidson

/s/ Jo Ann Davidson

Jo Ann Davidson

The date of maturity of the debt secured by this mortgage is the date on which the last scheduled principal payment becomes due, to-wit: March 22, 1985.

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 a prior Mortgage dated March 22, 1980 to James A. Bingham et ux, Mortgagor, and State of Oregon, Mortgagee to which this Second Mortgage is second and junior, and will warrant and forever defend the same against all persons; 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 payable 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 mortgagee and then to the mortgagor as their respective interests may appear; all policies of insurance shall be delivered to the mortgagee 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 satisfactory 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.

The mortgagor warrants that the proceeds of the loan represented by the above described note and this mortgage are:
 (a)* primarily for mortgagor's personal, family, household or agricultural purposes (see Important Notice below),
 (b)* for an organization or (even if mortgagor 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.

John A. Davidson

Jo Ann Davidson

*IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; if warranty (a) is applicable and if the mortgagee is a creditor, as 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 this 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. 105A)

TO

STATE OF OREGON,

County of

I certify that the within instrument was received for record on the day of , 19 , at o'clock M., and recorded in book on page or 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.

return: 77-7

STATE OF OREGON,

County of Klamath

BE IT REMEMBERED, That on this 22 day of February, 1980, before me, the undersigned, a notary public in and for said county and state, personally appeared the within named John A. Davidson and Jo Ann Davidson, 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 last above written.

Karla Bennett
 KARLA BENNETT
 NOTARY PUBLIC-OREGON
 My Commission Expires 1/24/84

Notary Public for Oregon.

My Commission expires

thence South 58°36'00" East 366.50 feet; thence South 86°24'00" East 317.60 feet to a $\frac{1}{2}$ " galvanized iron pipe in alignment with an existing North-South fence line; thence along said fence alignment as follows: South 05°55'30" West 1098.40 feet; thence South 00°48'30" East 72.20 feet, more or less, to a point on the North boundary extended of that parcel of real property described and recorded in M-70 at page 9929, of Deed Records of Klamath County, Oregon, and distant 60.35 feet from the Northeast corner thereof; thence South 83°01'45" West along said boundary and boundary extended a distance of 992.05 feet, more or less, to a $\frac{1}{2}$ " galvanized pipe which is distant 153.70 feet Easterly from the most Northwesterly corner of aforesaid parcel of real property; thence North 1232.84 feet to the true point of beginning.

EXCEPTING THEREFROM a parcel of land, being more particularly described as follows:

Beginning at a $\frac{1}{2}$ " iron rod on the Easterly boundary of the above described parcel from which a $\frac{1}{2}$ " iron pipe marking the true point of beginning of said above described parcel bears North 676.45 feet; thence North 83°01'45" East 980.72 feet to a $\frac{1}{2}$ " iron rod; thence South 5°55'30" West 484.72 feet to a $\frac{1}{2}$ " iron rod; thence South 00°48'40" East 82.18 feet to a $\frac{1}{2}$ " iron pipe; thence South 83°01'45" West 931.70 feet to a $\frac{1}{2}$ " iron pipe; thence North 556.39 feet to the true point of beginning.

Subject, however, to the following:

1. Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals, of Klamath Irrigation District.
2. Easement Agreement, including the terms and provisions thereof, between Obil S. Collman and Berniece Collman, and Harvey E. Wise and Vivian Wise, across the SW $\frac{1}{4}$ of Section 5, Township 40 South, Range 10 East of the Willamette Meridian, recorded December 31, 1964 in Book 358 at page 417, Deed Records, for purpose of carrying and conducting irrigation water.
3. Subject to a 20 foot easement as disclosed by Agreement between Obil S. Collman, et ux., and Charles I. Collins, et ux., dated July 12, 1972, recorded June 2, 1977 in Book M-77 at page 9631, Microfilm Records, for ingress and egress across Obil S. Collman's adjacent property.
4. Mortgage, including the terms and provisions thereof, with interest thereon and such future advances as may be provided therein, given to secure the payment of \$93,100.00

Dated : March 13, 1978
 Recorded : March 13, 1978 Book: M-78 Page: 4764
 Mortgagor : James A. Bingham and Bernadine K. Bingham, husband and wife,
 Mortgagee : State of Oregon, represented and acting by the Director of Veterans' Affairs, which mortgage grantee hereby assumes and agrees to pay according to its terms and also hereby assumes the obligation of James A. Bingham and Bernadine K. Bingham, husband and wife, under the terms of the instruments 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 his release from his obligations under the loan instruments, with a present balance due and owing to State of Oregon in the sum of \$90,697.91 with interest paid to February 22, 1980.

5. Agreement and Easement, including the terms and provisions thereof, dated January 6, 1979, recorded January 25, 1979, in Book M-79 at page 2159, Microfilm Records, between Charles I. Collins and Shirley J. Collins, husband and wife, Obil S. Collman and Berniece Collman, husband and wife, and James A. Bingham and Bernadine K. Bingham, husband and wife.

6. As disclosed by the assessment and tax roll, the premises herein have been specially assessed for farm use. If the land becomes disqualified for this special assessment under the statutes, an additional tax, plus interest and penalty, will be levied for the number of years in which this special assessment was in effect for the land.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Transamerica Title Co.

this 22nd. day of February A. D. 1980 at 4:51 o'clock P M., on

file recorded in Vol. M80, of Mortgages on Page 3614

EXHIBIT "A"

Wm D. MILNE, County Clerk
 By Bernetha M. Heltsch

Fee \$10.50