

K-33206

THIS MORTGAGE, made this 23 day of May, 1980, by ELSO DeJONG and DITA DeJONG, husband and wife, hereinafter called "Mortgagor", to C. H. Sewald, hereinafter called "Mortgagee";

W I T N E S S E T H:

That Mortgagor, for valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey, mortgage and confirm unto Mortgagee, his heirs, executors, administrators, successors and assigns, the property situate in the County of Klamath, State of Oregon, to-wit:

Township 38 South, Range 11 1/2 East of the Willamette Meridian:

Section 23: S 1/2 NW 1/4 and that portion of the SW 1/4 lying Northwesterly of Highway No. 140

Section 26: That portion of the NW 1/4 NW 1/4 described as follows: Beginning at a point on the North line of said NW 1/4 NW 1/4 which bears East a distance of 84.13 feet from a 5/8" iron pin marking the Northwest corner of said Section 26; thence S. 26 deg. 04' E. a distance of 834.54 feet to a 1/2" iron pin on the northwesterly right-of-way line of Highway #140; thence Northeasterly along said right-of-way to the north line of said NW 1/4 NW 1/4; thence West along said North line to the point of beginning; said parcel containing 7.12 acres, more or less.

Saving and excepting therefrom any portion thereof lying within the right of way of the Oregon-California & Eastern Railway and/or any roads.

SUBJECT TO: (1) The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. Taxes for the year 1979-80 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) Right of Way, including the terms and provisions thereof, given by C. H. Sewald and Lillian F. Sewald, husband and wife, to The California Oregon Power Company, a California corporation, dated March 10, 1949, and recorded March 16, 1949, in Deed Volume: 229 on page 420, records of Klamath County, Oregon.

TOGETHER WITH:

1. The tenements, hereditaments, and appurtenances now or hereafter used or usable in connection with the above described real property;
2. All leases, permits, licenses, privileges, rights-of-way, and easements, written or otherwise, now held by mortgagor, or hereafter issued, extended or renewed;
3. All improvements now on or hereafter placed upon said real property during the term of this mortgage, including all fixtures, now or hereafter a part of, or used in connection with said improvements.

THIS MORTGAGE IS GIVEN TO SECURE THE FOLLOWING:

1. Performance by Mortgagor of the covenants and agreements of Mortgagor contained in this mortgage instrument;
2. The payment of that certain promissory note of even date in the principal sum of \$116,657.00, with interest as provided in said note, payable to the order of Mortgagee; and,

3. Payment of any sum or sums advanced, incurred, or paid by Mortgagee; to, for, or on account of Mortgagor as provided in this mortgage instrument.

TO HAVE AND TO HOLD the said mortgaged property to the said Mortgagee, its heirs, executors, administrators, successors and assigns until the obligations secured by this mortgage instrument have been fully discharged.

**MORTGAGOR COVENANTS AND AGREES:**

1. Warranty of Title: That he is lawfully seized of the above described real property in fee simple, has good right and lawful authority to mortgage the same, and that said real property is free from all encumbrances, except as above set forth, and that Mortgagor will warrant and defend the same forever against the lawful claims and demands of all persons whomsoever, and this covenant shall not be extinguished by any foreclosure of this mortgage instrument, but shall run with the land.

2. Prompt Performance and Payment: To perform all obligations and pay all sums of money (both principal and interest at the rates specified in the note or in this mortgage instrument) secured hereby promptly when due.

3. Protection of Security: To keep the mortgaged property free of any liens of every kind which are superior to the lien of this mortgage; not to commit nor permit any waste to or on the mortgaged property; and not to permit nor to commit anything which shall impair the security created by this mortgage instrument. If a notice of lien or of delivery of materials is served upon Mortgagee by any mechanic lienor, Mortgagee shall provide a bond therefor or an irrevocable letter of credit from a responsible financial institution and will defend Mortgagee and indemnify and hold Mortgagee harmless from such lien and any costs with relation thereto, including attorney fees, if any, awarded such lienor.

4. Payment of Taxes and Assessments: To pay regularly and seasonably and before the same shall become delinquent, all taxes, assessments, and charges of whatever nature levied and assessed against the mortgaged property, or any part thereof, it being expressly understood that Mortgagor may pay any taxes or assessments in such installments as may be allowed by the taxing or assessing agency.

5. Condemnation: In the event any governmental agency or entity having the power of eminent domain acquires by eminent domain, or by negotiated sale in lieu of eminent domain, all, or any portion, of the real property described in this mortgage instrument, Mortgagee may require Mortgagor to apply all proceeds received by Mortgagor from such acquisition (remaining after payment by Mortgagor of attorney fees, appraiser fees, and related necessary and reasonable costs in connection with securing said proceeds), which proceeds are hereinafter called "net proceeds", toward the payment of the sums secured by this mortgage instrument. Upon receipt of said net proceeds, Mortgagor shall notify Mortgagee of the amount of said net proceeds and Mortgagee shall, within ten (10) days after such notification, notify Mortgagor if Mortgagee elects to have said net proceeds applied toward payment of the sums secured by this mortgage instrument. If Mortgagee fails to so notify Mortgagor of such election, Mortgagee shall conclusively be deemed to have elected not to require Mortgagor to apply said net proceeds toward the sums secured by this mortgage instrument. If Mortgagee elects to have said net proceeds applied toward payment toward the sums secured by this mortgage instrument, the amount to be received by Mortgagee shall not exceed the total of the principal secured by this mortgage instrument, plus accrued interest thereon to the date of receipt thereof by Mortgagee. Regardless of whether Mortgagee elects to have said net proceeds applied to the sums secured by this mortgage instrument, Mortgagee shall release from the lien of this mortgage instrument so

1 much of the real property above described acquired by such  
 2 governmental agency or entity by eminent domain, but Mortgagee shall  
 3 not be required to partially release more property than that which is  
 4 acquired by such governmental agency or entity. Mortgagee shall not be  
 5 obligated to participate in any negotiations with such governmental  
 6 agency or entity.

6. Expenses Incurred by Mortgagee to Protect Security: If  
 7 Mortgagee fails to pay or discharge any taxes, assessments, liens,  
 8 encumbrances, or charges to be paid by Mortgagor as provided in this  
 9 mortgage instrument, Mortgagee, at his option and without waiver of  
 10 default or breach of Mortgagor and without being obligated to do so,  
 11 may pay or discharge all or any part thereof. Mortgagee may appear in  
 12 bankruptcy, affecting in any way the security hereof, and, in such  
 13 event, Mortgagee shall be allowed and paid, and Mortgagor hereby  
 14 agrees to pay, all costs, charges and expenses, including costs of  
 15 evidence of title or validity and priority of the security created by  
 16 this mortgage instrument and reasonable attorney fees to be awarded by  
 17 the court, at trial or on appeal, incurred by Mortgagee in any such  
 18 action or proceeding in which Mortgagee may appear.

7. Time is Material and of the Essence: Time is material and of  
 11 the essence hereof; in the event of default of the payment of the  
 12 indebtedness evidenced by the note referred to in this mortgage  
 13 instrument, or any part thereof, or in the repayment of any  
 14 disbursement authorized by the terms of this mortgage and actually  
 15 made by Mortgagee, or in the repayment of any expense or obligation  
 16 payable by the Mortgagor but paid by the Mortgagee, as provided in  
 17 this mortgage instrument, or in the event of the breach of any of the  
 18 covenants or agreements by Mortgagor, Mortgagee may at once proceed to  
 19 foreclose this mortgage of the amount due, or in the case of default  
 20 as aforesaid, or in the event of the violation, non-performance or  
 21 breach of any of the covenants, conditions, agreements, or warranties  
 22 herein or in the promissory note secured by this mortgage, the entire  
 23 principal sum of the promissory note hereby secured and the whole  
 24 amount of all indebtedness owing by or chargeable to Mortgagor under  
 25 the provisions of this mortgage or intended to be secured hereby  
 26 shall, at the election of Mortgagee, become immediately due and  
 27 payable without notice although the time expressed in said note for  
 28 the payment thereof shall not have arrived and suit may immediately be  
 29 brought without notice to Mortgagor, and a decree be had to sell the  
 30 mortgaged property, or any part or parts thereof, either together or  
 31 in parcels, with all and every of the appurtenances, or any part  
 32 thereof, in the manner prescribed by law, and out of the monies  
 arising from said sale to repay said indebtedness, including both  
 principal and interest, together with the costs and charges of making  
 such sale and suit for foreclosure and also the amounts of all sums  
 advanced or paid by Mortgagee to or for the account of Mortgagor, with  
 interest thereon as provided, including such payments of liens, taxes,  
 or other encumbrances as may have been made by Mortgagee by reason of  
 provisions herein given, and inclusive of interest thereon, and the  
 overplus, if any there be, shall be paid by the party making such  
 sale, on demand, to Mortgagor. Mortgagor shall not be deemed to be in  
 default of any covenant herein, other than payment, unless Mortgagee  
 shall have first notified Mortgagor in writing of said default and  
 Mortgagor shall not have cured said default within 45 days thereafter.

8. Costs of Title in the Event of Foreclosure: Upon the  
 commencement of any suit to collect the indebtedness or disbursements,  
 secured hereby, or any part hereof, or to enforce any provisions of  
 this mortgage instrument, by foreclosure or otherwise, there shall  
 become due, and Mortgagor agrees to pay to Mortgagee, in addition to  
 all statutory costs and disbursements, any amount Mortgagee may incur  
 or pay for any title report, title search, insurance of title, or  
 other evidence of title subsequent to the date of this mortgage

instrument on any of the real property above described in this mortgage instrument and this mortgage instrument shall be security for the payment thereof.

9. Attorney-Fees-to Prevailing Party: In the event any suit or action is instituted to collect the indebtedness or disbursements secured hereby, or any part thereof, or to enforce any provision of this mortgage instrument by foreclosure, or otherwise, the prevailing party, at trial or on appeal, shall be entitled to such reasonable attorney fees as shall be fixed by the court having jurisdiction of the case, in addition to statutory costs and disbursements.

10. Waiver: No waiver by Mortgagee of any breach of any covenant or agreement of this mortgage instrument by Mortgagor shall be construed as a continuing waiver of any subsequent breach of such covenant, nor as a waiver of any other covenant, nor as a waiver of the covenant itself, nor as a waiver of this provision.

11. Binding-Effect-of-Mortgage-Instrument: This mortgage instrument contains a full understanding of the Mortgagor and the Mortgagee with respect to the provisions set forth herein and no modification of this mortgage instrument shall be given effect unless the same is in writing, subscribed by the Mortgagor and the Mortgagee (or their respective successor in interest) and made of record in the same manner as this mortgage instrument shall be given effect unless

12. Notices: Any notice or notices required to be given by either Mortgagor to Mortgagee or Mortgagee to Mortgagor pursuant to any provision of this mortgage instrument is made of record. shall be deemed given when the same is deposited in the party to whom notice is to be given at the last address of such party known by mail as registered mail, postage prepaid, addressed to the party to whom notice is to be given in person to the party to whom notice is to be given of a notice giving such notice. In lieu of mailing such notice, such notice may be delivered in person to the party to whom notice is to be given and execution by the person to whom notice is to be given of a receipt of such notice shall be conclusive of delivery of such notice.

13. Binding-Effect-and-Construction-of-Mortgage-Instrument: This mortgage instrument shall bind and inure to the benefit of, as the circumstances may require, the parties hereto, and their respective heirs, executors, administrators, successors, and assigns. In continuing this mortgage instrument, the singular shall include both the singular and the plural and the masculine the masculine, the feminine, and the neuter. This headings contained in this mortgage instrument are for convenience only and are not to be construed as part of this mortgage instrument. To the extent that an exhibit is attached to this mortgage instrument, the same is hereby incorporated into this mortgage instrument as though fully set forth at the place in this mortgage instrument at which reference to said exhibit is made.

DATED this 23 day of May, 1980

Elso DeJong  
ELSO DeJONG

Dita DeJong  
DITA DeJONG

C. H. Sewald  
C. H. SEWALD

1 STATE OF OREGON )  
 2 County of Klamath ) ss.

3 On this 5 day of June, 1980, personally appeared  
 4 ELSON DeJONG and DITA DeJONG, husband and wife, and acknowledged the  
 5 foregoing instrument to be their voluntary act and deed.

6 (SEAL)

Before me:

Notary Public for Oregon

My Commission expires: 8-5-83

8 STATE OF OREGON )  
 9 County of Klamath ) ss.

10 On this 23rd day of May, 1980, personally appeared  
 11 C. H. SEWALD, and acknowledged the foregoing instrument to be his  
 12 voluntary act and deed.

13 (SEAL)

Before me:

Notary Public for Oregon

My Commission expires: 7-19-82

17  
 18 Return to KATO

21 STATE OF OREGON; COUNTY OF KLAMATH; ss.

22 filed for record at request of Klamath County Title Co.

23 this 6th day of June A. D. 19 80 at 3:38 clock P M., and

24 only recorded in Vol. M80, of Mortgages on Page 10414

25 By Wm D. MILNE, County Clerk  
Bernetha Heltsch

26 Fee \$17.50