

MTC-9772-K

Position 5

Vol. 18/

Page

2865

USDA-FmHA

Form FmHA 427-1 OR

(Rev. 1-19-79)

REAL ESTATE MORTGAGE FOR OREGON

96111

THIS MORTGAGE is made and entered into by CLARENCE M. KIRKPATRICK, III and JANE E. KIRKPATRICK, husband and wife

residing in KLAMATH County, Oregon, whose post office address is Star Route Box 123, Malin, OR 97632, Oregon

herein called "Borrower," and "Government," to make a loan to the Borrower, as evidenced by one or more promissory note(s) of assumption agreement(s), herein called "note," which has been executed by Borrower, is payable to the order of the Government, and is described as follows:

(1) To wit: through the sale of the property to the Government, the 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, or any other statutes administered by the Farmers Home Administration:

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, or any other statutes administered by the Farmers Home Administration:

And this instrument also secures the recapture of any interest credit or subsidy which may be granted to the Borrower by the Government pursuant to 42 U.S.C. §1490a:

BORROWER, 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 same 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

PARCEL 1: All that portion of the NE 1/4 of Section 7, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, lying South of the center line of the U.S.R.S. "D" Canal, AND ALSO the NE 1/4 and Lot 1 of Section 7, Township 41 South, Range 12 East of the Willamette Meridian, less the following described portion: All that portion of the NE 1/4 and of Lot 1, Section 7, Township 41 South, Range 12 East of the Willamette Meridian, which lies North of the North line of the right of way of the "D" Canal of the U.S.R.S. running in a general East and West direction across said subdivisions, which excepted portion was conveyed by Clarence M. Kirkpatrick et ux, to Randolph Cacka by Deed recorded in Book 139, page 380, Deed Records of Klamath County, ALSO, part of the SE 1/4 of Section 1, (continued on the next page)

DATE OF INSTRUMENT February 19, 1981 PRINCIPAL AMOUNT \$200,000.00 ANNUAL RATE 5.0% DUE DATE OF FINAL INSTALLMENT January 1, 2021

(If the interest rate is less than 11.00% for farm ownership or operating loan(s) secured by this instrument, then the rate may be changed as provided in the note.)

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Township 41 South, Range 12 East of the Willamette Meridian, described as follows: Beginning at the Southeast corner of the Northeast Quarter of said Section 1, thence West on the South line of said Section, 440 feet, thence North to the Adams Canal as now located across the said S $\frac{1}{2}$ NE $\frac{1}{4}$ , thence East along said Canal to the East line of said Section 1, thence South along said Section line to the place of beginning and being the same land described in Deed from Lakeside Company, a corporation, to Albert Krotochvil, recorded March 21, 1910, in Book 28 of Deeds, page 499, records of Klamath County, Oregon.

PARCEL 2: The S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 6, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, less the following described portion: All that part of the S $\frac{1}{2}$  of SE $\frac{1}{4}$  of Section 6, Township 41 South, Range 12 East of the Willamette Meridian, described as follows: Beginning at the Northwest corner of said S $\frac{1}{2}$ SE $\frac{1}{4}$ , thence South along the West line of S $\frac{1}{2}$ SE $\frac{1}{4}$ , 920 feet, more or less, to the North bank of the irrigation ditch running Easterly across said S $\frac{1}{2}$ SE $\frac{1}{4}$ , as now located and constructed, thence Easterly following the said North bank of said irrigation ditch as now located and constructed across the said S $\frac{1}{2}$ SE $\frac{1}{4}$  to the East line of the S $\frac{1}{2}$ SE $\frac{1}{4}$ , thence North on the East line of said S $\frac{1}{2}$ SE $\frac{1}{4}$  to the Northeast corner of said S $\frac{1}{2}$ SE $\frac{1}{4}$ , thence West along the North line thereof, 2640 feet, more or less, to the point of beginning, which excepted portion was conveyed by Clarence M. Kirkpatrick, et ux, to Luther T. and Gladys A. Hansen by Deed recorded in Book 172, at page 305, Deed Records of Klamath County, AND ALSO all that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7, Township 41 South, Range 12 East of the Willamette Meridian, lying North of the centerline of the U.S.R.&S. "D" Canal.

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

BORROWER for Borrower's self, Borrower's 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 Borrower 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 Borrower's 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.

W-20-2225

(8) To keep the property insured as required by and under insurance policies approved by the Government and, at its request, to deliver such policies to 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 (a) extend or defer the maturity of, and renew and reschedule the payments on, the debt evidenced by the note or any indebtedness to the Government secured by this instrument, (b) release any party who is liable under the note or for the debt from liability to the Government, (c) release portions of the property and subordinate its lien, and (d) waive any other of its rights under this instrument. Any and all this can and will be done without affecting the lien or the priority of this instrument or Borrower's or any other party's liability to the Government for payment of the note or debt secured by this instrument unless the Government says otherwise in writing. HOWEVER, any forbearance by the Government whether once or often in exercising any right or remedy under this instrument, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

(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 in this instrument or 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) Borrower agrees that the Government will not be bound by any present or future laws, (a) providing for valuation, appraisal, homestead or exemption of the property, (b) prohibiting maintenance of an action for a deficiency judgment or limiting the amount thereof or the time within which such action may be brought, (c) prescribing any other statute of limitations, (d) allowing any right of redemption or possession following any foreclosure sale, or (e) limiting the conditions which the Government may by regulation impose, including the interest rate it may charge, as a condition of approving a transfer of the property to a new Borrower. Borrower expressly waives the benefit of any such State law. Borrower hereby relinquishes, waives, and conveys all rights, inchoate or consummate, of descent, dower, and curtesy.

(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 Borrower 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, sex, 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, sex or national origin.

(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, at Portland, Oregon 97205; and in the case of Borrower at the address shown in the Farmers Home Administration Finance Office records (which normally will be the same as the post office address shown 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.

(24) Borrower agrees that the Government will not be bound by any breach of any condition or requirement of the instrument in the event of a breach of any condition or requirement of the instrument.

(25) The Government will not be bound by any breach of any condition or requirement of the instrument in the event of a breach of any condition or requirement of the instrument.

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WITNESS the hand(s) of Borrower this 19th day of February, 19 81.

(29) Should default occur in the performance of any of the obligations of the instrument, the Government will not be bound by any breach of any condition or requirement of the instrument.

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**ACKNOWLEDGMENT FOR OREGON**

STATE OF OREGON, County of Klamath, ss.

I, CLARENCE M. KIRKPATRICK, III and JANE E. KIRKPATRICK, husband and wife, do hereby certify that the foregoing instrument was executed by us on the day of February, 19 81, at Medford, Oregon.

On this 19th day of February, 19 81, personally appeared the above-named CLARENCE M. KIRKPATRICK, III and JANE E. KIRKPATRICK, husband and wife, who acknowledged to me that they executed the foregoing instrument as their

voluntary act and deed. Before me, Notary Public.

Justi L. Garrison  
Notary Public

(1) To be a valid instrument, the instrument must be executed by the Borrower and the Government.

(2) To be a valid instrument, the instrument must be executed by the Borrower and the Government.

(3) To be a valid instrument, the instrument must be executed by the Borrower and the Government.

State of OREGON: COUNTY OF KLAMATH: ss.

I hereby certify that the within instrument was received and filed for record on the 19th day of February A.D., 19 81 at 11:29 o'clock A M., and duly recorded in Vol 481 of Mortgages on page 2865.

Fee \$14.00

EVELYN BIEHN  
COUNTY CLERK

By Sherette J. Heloche Deputy