

99092

Vol. 578/ Page 7810

1 THIS MORTGAGE, made this 1st day of May, 1981, by REX H. ERVIN
 2 and BEVERLY ERVIN, hereinafter called "Mortgagor", to S. RUSH COFFIN,
 3 hereinafter called "Mortgagee";

4 W I T N E S S E T H:

5 That Mortgagor, for valuable consideration, receipt of which is
 6 hereby acknowledged, does hereby grant, bargain, sell, convey, mortgage
 7 and confirm unto Mortgagee, his heirs, executors, administrators,
 8 successors and assigns, the property situate in the County of Klamath,
 9 State of Oregon, and more particularly described in Exhibit "A",
 10 attached hereto.

11 TOGETHER WITH:

12 1. The tenements, hereditaments, and appurtenances now or here-
 13 after used or usable in connection with the above described
 14 real property;

15 2. All leases, permits, licenses, privileges, rights-of-way,
 16 and easements, written or otherwise, now held by Mortgagor, or
 17 hereafter issued, extended or renewed;

18 3. All improvements now on or hereafter placed upon said real
 19 property during the term of this mortgage, including all fixtures,
 20 now or hereafter a part of, or used in connection with said
 21 improvements.

22 THIS MORTGAGE IS GIVEN TO SECURE THE FOLLOWING:

23 1. Performance by Mortgagor of the covenants and agreements of
 24 Mortgagor contained in this mortgage instrument;

25 2. The payment of that certain promissory note of even date in
 26 the principal sum of \$49,000.00, with interest as provided in
 27 said note, payable to the order of Mortgagee; and,

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

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

35 MORTGAGOR COVENANTS AND AGREES:

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

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

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

59 4. Payment of Taxes and Assessments: To pay regularly and
 60 seasonably when they first become payable and before they begin to bear

Mortgage
 Page -1-

31 MAY 1 PM 3 11

1 interest, all taxes, assessments and charges of whatever nature levied
and assessed against the mortgaged property, or any part thereof.

2 5. Condemnation: In the event any governmental agency or entity
3 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
4 real property described in this mortgage instrument, Mortgagee may
5 require Mortgagor to apply all proceeds received by Mortgagor from
such acquisition (remaining after payment by Mortgagor of attorney
6 fees, appraiser fees, and related necessary and reasonable costs in
connection with securing said proceeds), which proceeds are hereinafter
7 called "net proceeds", toward the payment of the sums secured by this
mortgage instrument. Upon receipt of said net proceeds, Mortgagor shall
8 notify Mortgagee of the amount of said net proceeds and Mortgagee
shall, within ten (10) days after such notification, notify Mortgagor
9 if Mortgagee elects to have said net proceeds applied toward payment of
the sums secured by this mortgage instrument. If Mortgagee fails to so
10 notify Mortgagor of such election, Mortgagee shall conclusively be
deemed to have elected not to require Mortgagor to apply said net
11 proceeds toward the sums secured by this mortgage instrument. If
Mortgagee elects to have said net proceeds applied toward payment
12 toward the sums secured by this mortgage instrument, the amount to be
received by Mortgagee shall not exceed the total of the principal
13 secured by this mortgage instrument, plus accrued interest thereon to
the date of receipt thereof by Mortgagee. Regardless of whether
14 Mortgagee elects to have said net proceeds applied to the sums secured
by this mortgage instrument, Mortgagee shall release from the lien of
15 this mortgage instrument so much of the real property above described
acquired by such governmental agency or entity by eminent domain, but
16 Mortgagee shall not be required to partially release more property than
that which is acquired by such governmental agency or entity. Mortgagee
shall not be obligated to participate in any negotiations with such
17 governmental agency or entity.

18 6. Expenses Incurred by Mortgagee to Protect Security: If
Mortgagor fails to pay or discharge any taxes, assessments, liens,
19 encumbrances, or charges to be paid by Mortgagor as provided in this
mortgage instrument, Mortgagee, at their option and without waiver of
20 default or breach of Mortgagor and without being obligated to do so,
may pay or discharge all or any part thereof. Mortgagee may appear in
21 or defend any action or proceeding at law, in equity, or in bankruptcy,
affecting in any way the security hereof, and, in such event, Mortgagee
22 shall be allowed and paid, and Mortgagor hereby agrees to pay, all
costs, charges and expenses, including costs of evidence of title or
23 validity and priority of the security created by this mortgage
instrument and reasonable attorney fees to be awarded by the court, at
24 trial or on appeal, incurred by Mortgagee in any such action or
proceeding in which Mortgagee may appear.

25 7. Time is Material and Of the Essence: Time is material and of
the essence hereof; in the event of default of the payment of the
26 indebtedness evidenced by the note referred to in this mortgage
instrument, or any part thereof, or in the repayment of any
disbursement authorized by the terms of this mortgage and actually
27 made by Mortgagee, or in the repayment of any expense or obligation
payable by the Mortgagor but paid by the Mortgagee, as provided in
28 this mortgage instrument, or in the event of the breach of any of the
covenants or agreements by Mortgagor, Mortgagee may at once proceed to
29 foreclose this mortgage of the amount due, or in the case of default
as aforesaid, or in the event of the violation, non-performance or
30 breach of any of the covenants, conditions, agreements, or warranties
herein or in the promissory note secured by this mortgage, the entire
31 principal sum of the promissory note hereby secured and the whole
amount of all indebtedness owing by or chargeable to Mortgagor under
32 the provisions of this mortgage or intended to be secured hereby
shall, at the election of Mortgagee, become immediately due and

1 payable without notice although the time expressed in said note for
 2 the payment thereof shall not have arrived and suit may immediately be
 3 brought without notice to Mortgagor, and a decree be had to sell the
 4 mortgaged property, or any part or parts thereof, either together or
 5 in parcels, with all and every of the appurtenances, or any part
 6 thereof, in the manner prescribed by law, and out of the monies
 7 arising from said sale to repay said indebtedness, including both
 8 principal and interest, together with the costs and charges of making
 9 such sale and suit for foreclosure and also the amounts of all sums
 10 advanced or paid by Mortgagee to or for the account of Mortgagor, with
 11 interest thereon as provided, including such payments of liens, taxes,
 12 or other encumbrances as may have been made by Mortgagee by reason of
 13 provisions herein given, and inclusive of interest thereon, and the
 14 overplus, if any there be, shall be paid by the party making such sale,
 15 on demand, to Mortgagor. Mortgagor shall not be deemed to be in default
 16 of any covenant herein, other than payment, unless Mortgagee shall have
 17 first notified Mortgagor in writing of said default and Mortgagor shall
 18 not have cured said default within 45 days thereafter.

19 ~~8. Costs of Title in the Event of Foreclosure:~~ Upon the
 20 commencement of any suit to collect the indebtedness or disbursements,
 21 secured hereby, or any part hereof, or to enforce any provisions of
 22 this mortgage instrument, by foreclosure or otherwise, there shall
 23 become due, and Mortgagor agrees to pay to Mortgagee, in addition to
 24 all statutory costs and disbursements, any amount Mortgagee may incur
 25 or pay for any title report, title search, insurance of title, or
 26 other evidence of title subsequent to the date of this mortgage
 27 instrument on any of the real property above described in this
 28 mortgage instrument and this mortgage instrument shall be security for
 29 the payment thereof.

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

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

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

49 ~~12. Notices:~~ Any notice or notices required to be given by
 50 either Mortgagor to Mortgagee or Mortgagee to Mortgagor pursuant to
 51 any provision of this mortgage instrument shall be in writing, and
 52 shall be deemed given when the same is deposited in the United States
 53 mail as registered mail, postage prepaid, addressed to the party to
 54 whom notice is to be given at the last address of such party known by
 55 the party giving such notice. In lieu of mailing such notice, such
 56 notice may be delivered in person to the party to whom notice is to be
 57 given and execution by the person to whom notice is to be given of a
 58 receipt of such notice shall be conclusive of delivery of such notice.

59 ~~13. Binding Effect and Construction of Mortgage Instrument:~~ This
 60 mortgage instrument shall bind and inure to the benefit of, as the
 61 circumstances may require, the parties hereto, and their respective
 62 heirs, executors, administrators, successors, and assigns. In
 63 continuing this mortgage instrument, the singular shall include both

the singular and the plural and the masculine the masculine, the feminine, and the neuter. These 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.

WITNESS the hands and seals of the parties hereto the day and year first above written.

Rex H. Ervin
REX H. ERVIN

Beverly Ervin
BEVERLY ERVIN

S. RUSH COFFIN

STATE OF OREGON)
County of Klamath) ss.

On this 30th day of April, 1981, personally appeared REX H. ERVIN and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Nancy L. Doane
Notary Public for Oregon
My Commission Expires: 12-16-83

STATE OF OREGON)
County of Klamath) ss.

On this 30th day of April, 1981, personally appeared BEVERLY ERVIN and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me:

Nancy L. Doane
Notary Public for Oregon
My Commission Expires: 12-16-83

STATE OF OREGON)
County of Klamath) ss.

On this _____ day of _____, 1981, personally appeared S. RUSH COFFIN and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission Expires: _____

EXHIBIT "A" TO MORTGAGE

SE $\frac{1}{4}$ NE $\frac{1}{4}$; all of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ except that portion lying Southwesterly of the right of way of the Great Northern Railway; and Lots 8 and 9; all in Section 17, Township 40 South, Range 10 E.W.M.

SAVING AND EXCEPTING those portions conveyed to the United States of America by Vol. 37, page 401, and Vol. 45, page 233, Deed Records of Klamath County, Oregon.

ALSO SAVING AND EXCEPTING those portions conveyed to the Great Northern Railway by Vol. 95, page 346, and Vol. 95, 352, Deed Records of Klamath County, Oregon.

SUBJECT TO an easement reserved unto Mortgagee and Mortgagee's heirs, successors and assigns, which easement is in gross, of a strip of land which is 60 feet in width, the north boundard of which is contiguous with the north boundard of the property above described lying east of Hill Road for purposes of ingress and egress to the property lying immediately east of the property above described, for all purposes whatsoever; provided, however, that at such time as Mortgagee or Mortgagee's heirs, successors or assigns improve such easement, Mortgagee or Mortgagee's heirs, successor or assigns shall cause to be placed a fence line along the south side of such easement sufficient to prevent cattle from escaping from Mortgagor's premises.

ALSO SUBJECT TO Mortgage executed contemporaneously herewith wherein Mortgagor herein is Mortgagor, as to which this Mortgage is junior.

ALSO 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 1980-81, 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 exist.

2. Acreage and use limitations under provisions of United States Statutes and regulations issued thereunder.

3. Liens and assessments of Klamath Project and Klamath Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.

4. Rules, regulations and assessments of Klamath Basin Improvement District.

5. Agreement relative to furnishing water, including the terms and provisions thereof, between George M. Rudolph and Ethel J. Rudolph, husband and wife, and United States of America, dated December 26, 1931, recorded January 14, 1932, in Deed Vol. 96, page 522, records of Klamath County, Oregon.

6. Right of Way for transmission line, including the terms and provisions thereof, given by E. G. Argraves to The California Oregon Power Company, dated July 24, 1933, recorded August 10, 1933, in Volume 101, page 330, Deed records of Klamath County, Oregon.

7. Right of Way for transmission line, including the terms and provisions thereof, given by C. M. Boman and Dora Boman, husband and wife, to The California Oregon Power Company, dated August 17, 1939, recorded September 26, 1939, in Volume 124, page 488, Deed records of Klamath County, Oregon.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of _____

this 1st day of May A.D. 1981 at 3:11 o'clock P. M.

Exhibit "A" to Mortgage duly recorded in Vol. MB1, of Mtg. on page 7810.

Fee \$17.50

By Evelyn Biehn, County Clerk