

MTC 12744-2

MORTGAGE

This mortgage made this 12th day of August, 1983, by MICHAEL G. O'BRIEN and CAROL L. O'BRIEN, husband and wife, and CREIGHTON E. BAILEY and JEANNETTE L. BAILEY, husband and wife, mortgagor, to CARSON P. MERKLEY and ELIZABETH M. MERKLEY, husband and wife, mortgagee,

WITNESSETH

That mortgagor, in consideration of the conveyance by the mortgagee by WARRANTY DEED of the Real Property described below, the said mortgagor hereby grants, bargains, sells, and conveys to mortgagee, his heirs, executors, administrators, and assigns, that certain real property situated in the County of Klamath, State of Oregon, bounded and described as follows, as security for the below listed promissory note.

PARCEL 1:

Township 36 South, Range 14 East of the Willamette Meridian, Klamath County, Oregon.

Section 19: The S 1/2 of the S 1/2 of the SE 1/4 of the SW 1/4 and the N 1/2 of the N 1/2 of the SW 1/4 of the SW 1/4 lying Southerly of the Southerly right of way line of the Klamath Falls-Lakeview Highway, and the S 1/2 of the S 1/2 of the SW 1/4 of the SW 1/4.

Section 30: That portion of the NW 1/4 of the NE 1/4 lying Southerly of the Southerly right of way line of the Klamath Falls-Lakeview Highway; the E 1/2 of the NW 1/4; Lots 1, 2 and 3.

EXCEPTING THEREFROM that portion conveyed to Gary A. Martin for roadway by Deed recorded August 14, 1973 in Volume M73, page 10895, Microfilm Records of Klamath County, Oregon.

ALSO EXCEPTING THEREFROM that portion conveyed to Klamath County for roadway by Deeds recorded June 5, 1974 in Volume M74, page 6892, Microfilm Records of Klamath County, Oregon, in Volume M74, page 6894, Volume M74, page 6896, Volume M74, page 6898, all Microfilm Records of Klamath County, Oregon.

PARCEL 2:

All that portion of the N 1/2 of the SW 1/4 of the NE 1/4 of Section 30, Township 36 South, Range 14 East of the Willamette Meridian, Klamath County, Oregon, lying West of Lenora Way, and the West 420 feet of the S 1/2 of the SW 1/4 of the NE 1/4 of said Section 30, EXCEPTING THEREFROM that certain parcel 60 feet wide as described in Deed recorded January 30, 1974 in Deed Volume M74, page 1044, Microfilm Records of Klamath County, Oregon, traversing the W 1/2 SW 1/4 NE 1/4 of said Section 30.

Subject to the following:

1. The assessment roll and the tax roll disclose that the premises herein described have been specifically assessed as Farm Use Land. If

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the land becomes disqualified for the special assessment under the statute, an additional tax may be levied and in addition thereto a penalty may be levied if notice of disqualification is not timely given.

2. Rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.

3. Grant of Right of Way, including the terms and provisions thereof,

Dated: August 20, 1958

Recorded: August 22, 1958

Volume: 302, page 398, Deed Records of Klamath County, Oregon

In favor of: The California Oregon Power Company

For: Electric transmission and distribution lines

4. Mortgage, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein.

Dated: June 16, 1978

Recorded: June 26, 1978

Volume: M78, page 13629, Microfilm Records of Klamath County, Oregon

Amount: \$17,000.00

Mortgagor: Carson P. Merkley and Elizabeth P. Merkley, husband and wife

Mortgagee: The Federal Land Bank of Spokane (Affects Parcel 1 and other property)

5. Right of Way Easement, including the terms and provisions thereof,

Dated: April 11, 1980

Recorded: May 19, 1980

Volume: M80, page 9451, Microfilm Records of Klamath County, Oregon

In favor of: Pacific Power and Light Company

For: Electric transmission and distribution line

(Affects Parcel 2)

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 on the 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 premises with the appurtenances to mortgagee, his heirs, executors, administrators, and assigns forever.

This mortgage is intended to secure the payment of a promissory note, a copy of which is attached hereto.

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: See Note, 19 .

And mortgagor covenants to and with mortgagee, his heirs, executors, administrators, and assigns that he is lawfully seized in fee simple of the premises and has a valid unencumbered title thereto, except as noted above, and will warrant and forever defend the same against all persons; that he will pay the note, principal,

and interest according to the terms thereof; that while any part of the note remains unpaid he will pay all taxes, assessments, and other charges of every nature that may be levied or assessed against the 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 all liens and 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 premises continuously insured against loss or damage by fire and such other hazards as 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 mortgagee, with loss payable first to mortgagee and then to mortgagor as their respective interests may appear; all policies of insurance shall be delivered to mortgagee as soon as insured.

Now, if mortgagor shall fail for any reason to procure any such insurance and to deliver the policies to mortgagee at least 5 days prior to the expiration of any policy of insurance now or hereafter placed on the buildings, mortgagee may procure the same at mortgagor's expense.

Now, therefore, if mortgagor keeps and performs the covenants herein contained and pays the note according to its terms, this conveyance shall be void; otherwise it shall remain in full force as a mortgage to secure the performance of all of the covenants and the payment of the note; if mortgagor fails to perform any covenant herein, or if a proceeding of any kind is taken to foreclose any lien on the premises or any part thereof, mortgagee shall have the option to declare the whole amount unpaid on the note or on this mortgage at once due and payable, and this mortgage may be foreclosed at any time thereafter. If mortgagor fails to pay any taxes or charges or any lien, encumbrance, or insurance premium as above provided for, 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 the note without waiver, however, of any right arising to mortgagee for breach of covenant. And this mortgage may be foreclosed for principal, interest, and all sums paid by mortgagee at any time while mortgagor neglects to repay any sums so paid by mortgagee. In the event of any suit or action being instituted to foreclose this mortgage, mortgagor agrees to pay all reasonable costs incurred by 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.

All of the covenants and agreements herein contained shall apply to and bind the heirs, executors, administrators, and assigns of mortgagor and/or mortgagee, respectively.

In case suit or action is commenced to foreclose this

mortgage, the court may, on motion of mortgagee, appoint a receiver to collect the rents and profits arising out of the premises during the pendency of such foreclosure, and apply the same, after first deducting all of the receiver's proper charges and expenses, to the payment of the amount due under this mortgage.

In construing this mortgage, it is understood that 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, mortgagor has hereunto set his hand the day and year first above written.

Michael G. O'Brien
MICHAEL G. O'BRION

Carol L. O'Brien
CAROL L. O'BRION

STATE OF OREGON)
) ss.
County of Klamath)

On this 12th day of August, 1983, personally appeared the above named Michael G. O'Brien and Carol L. O'Brien and acknowledged the foregoing instrument to be their voluntary act and deed.

Jinda Steele
NOTARY PUBLIC for Oregon
My Commission expires: 7/13/85

Creighton E. Bailey
CREIGHTON E. BAILEY

Jeannette L. Bailey
JEANNETTE L. BAILEY

STATE OF OREGON)
) ss.
County of Klamath)

On this 12th day of August, 1983, personally appeared the above named Creighton E. Bailey and Jeannette L. Bailey and acknowledged the foregoing instrument to be their voluntary act and deed.

Jinda Steele
NOTARY PUBLIC for Oregon
My Commission expires: 7/13/85

Return: MTC

MORTGAGEE:

Carson P. Merkley
Elizabeth M. Merkley

MORTGAGOR:

Michael G. O'Brien
Carol L. O'Brien
Creighton E. Bailey
Jeannette L. Bailey

After recording return to:

Mail tax statements to:

M.T.C.

Mortgage
12750 Glenwood Rd
Lodi, Ca 95240

STATE OF OREGON)
) ss.
County of Klamath)

for
recorder's
use

I certify that the within instrument
was received for record on the ____ day of
____, 19____, at ____
o'clock ____ M., and recorded in
book/reel/volume No. ____ on page ____ or
as document/fee/file/ instrument/microfilm
No. ____ Record of Deeds of said county.

Name _____ Title _____
By _____

PROMISSORY NOTE

\$123,350.00

August 12, 1983

Each of the undersigned promises to pay to the order of CARSON P. MERKLEY and ELIZABETH M. MERKLEY and upon the death of any of them, then to the order of the survivor of them, at Klamath Falls, Oregon, ONE HUNDRED TWENTY THREE THOUSAND THREE HUNDRED FIFTY and NO/100 DOLLARS, with interest thereon as follows:

1. A lump sum payment of \$10,000.00 one year from the day of August, 1983 at no interest.
2. Beginning on the 12th day of August, 1984, interest on the remaining balance of \$113,350.00 shall begin at the rate of 10% per annum. Payments on the principal and interest shall be made annually in an amount of not less than \$15,000.00 until paid.

Payments shall continue until the whole sum hereof, principal and interest has been paid; if any of said installments is not so paid, the whole sum of both principal and interest shall 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, each of the undersigned promises and agrees to pay the reasonable collection costs of the holder hereof; and if suit or action is filed hereon, also promises 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.

It is the intention of the parties hereto that the said payees do not take the title hereto as tenants in common but with the right of survivorship, that is: on the death of any of the payees, the right to receive payment of the then unpaid balance of principal and interest shall vest absolutely in the survivor of them.

/s/
MICHAEL G. O'BRIEN

/s/
CREIGHTON E. BAILEY

/s/
CAROL L. O'BRIEN

/s/
JEANNETTE L. BAILEY

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record

this 18th day of August A.D. 19 83 at 3:54 o'clock P. M., and
duly recorded in Vol. M83, of Mortgages on Page 13914

EVELYN BIEHN, County Clerk

Fee \$24.00

By [Signature]