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ASSIGNMENT AND MORTGAGE

Vol. M84 Page 13517

DATE:

July 25, 1984

PARTIES:

FRED G. HESS and EDITH M. HESS,
husband and wife,
P. O. Box 283
Malin, Oregon 97632

Assignor-Mortgagor

DALE W. RUISCH and NELLIE RUISCH,
husband and wife,
Rural Route 2
Sanborn, Iowa 51248

Assignee-Mortgagee

R E C I T A L S:

A. The Assignor-Mortgagor is the Assignee of the Seller under a certain Contract of Sale dated October 1, 1983, a memorandum of Contract of Sale is recorded in Volume M83, page 174961, and the assignment of Contract of Sale is dated the 25 day of July, 1984 and recorded in Volume M84, page 13143 records of Klamath County, Oregon.

B. The Assignor-Mortgagor became indebted to Assignee-Mortgagee in the sum of \$73,874.47 on or about October 1, 1983 as evidenced by a Promissory Note of that date.

C. The parties hereto desire to substitute security for the Note mentioned in paragraph B above and are in Consideration thereof agreeing as follows:

AGREEMENTS:

SECTION 1. ASSIGNMENT:

1.1 For value received by Assignor from Assignee, Assignor hereby grants, bargains, sells and conveys to Assignee, their successors and assigns, all of Assignor's right, title and interest in the following interest in real property:

Contract of Sale dated October 1, 1983 a Memorandum of Contract of Sale is recorded in Volume M83, page 17496 records of Klamath County, Oregon and the assignment of Contract of Sale is dated the 25 day of July, 1984 and recorded in Volume M84, page 13143 records of Klamath County, Oregon concerning the following described real property:

A parcel of land situated in Sections 21 and 28 T. 40 S., R. 10 E.W.M., Klamath County, Oregon, being more particularly described as follows:
Beginning at a point, being the intersection of centerlines for a 20 foot wide road easement and the U.S.B.R. No. 5-H Drain, from which an aluminum survey cap marking the section corner common to Sections 20, 21, 28 and 29, T. 40 S., R. 10 E.W.M. bears S9°24'03"W, 1052.30 feet; thence along the centerline of said 20 foot wide easement the following courses and distances:
1) N55°04'31"E, 481.98 feet; 2) N49°46'20"E, 108.36 feet; 3) N38°36'01"E, 66.77 feet;
4) N40°46'40"W, 32.49 feet to a point on the centerline of the U.S.B.R. No. 5 Drain; thence leaving said easement centerline and continuing along said No. 5 Drain the following courses and distances: 1)

N53°44'39"E, 44.23 feet; 2) N86°20'21"E, 426.98 feet; 3) N32°05'57"E, 46.23 feet; 4) N1°16'58"E, 154.64 feet; 5) N37°38'55"W, 325.72 feet; 6) N11°06'48"E, 250.0 feet; 7) N25°36'48"E, 160.00 feet; 8) N12°53'12"W, 130 feet, more or less, to the confluence of Lost River; thence downstream along the right bank of said Lost River to the centerline of an irrigation ditch, being the Southeast corner of a 14 acre parcel of land as described in Volume M80, Page 9391, Klamath County Deed Records; thence Westerly along said centerline and the South boundary of said 14 acre parcel the following courses and distances: S50°01'W, 59 feet; N87°58'24"W, 393.05 feet; S77°03'52"W, 29.04 feet; N88°01'46"W, 413.75 feet; N66°51'57"W, 93.41 feet; N74°15'24"W, 346.81 feet; S79°52'31"W, 19.91 feet; N88°23'49"W, 425.37 feet; N46°56'52"W, 324.75 feet; N52°06'36"W, 88.07 feet to the South line of Parcel 1 as described in Volume M76, Page 4925, Klamath County Deed Records; hence along said South line, WEST, 69.28 feet, more or less, to the True Point of Beginning of Parcel 2 as described in Volume M76, Page 4925, Klamath County Deed Records; thence Southerly along the East line of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 21 and the West line of the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of said Section 28 to the Northeast corner of a parcel of land as described in Volume M80, page 9389, Klamath County Deed Records, said NE corner being on the centerline of an irrigation ditch; thence along said centerline S54°34'W, 239.16 feet, more or less; thence leaving said centerline, N81°32'41"W, 46.22 feet, more or less, to a point on the centerline of said U.S.B.R. 5-H Drain; thence along said 5-H Drain centerline, N8°13'49"E, 720 feet, more or less, to an angle point in said 5-H Drain; thence continuing along said 5-H Drain centerline, N57°27'52"W, 1202.90 feet to the point of beginning.

TOGETHER WITH: A non-exclusive 30 foot wide road easement, for ingress and egress over and across the following described centerline: beginning at the intersection of the Northeasterly right-of-way line State Highway No. 39 (Merrill Hwy) and the West line of Section 28; thence Northerly along said West line of Section 28 to an aluminum survey cap marking the section corner common to said Sections 20, 21, 28 and 29; thence along the East line of said Section 20, N0°15'47"W 1005.37 feet to a point on the centerline of a 20 foot wide road easement, said point being the Southwest corner of Parcel No. 3 of Minor Land Partition No. 34-82; thence along said 20 foot wide road easement centerline N82°24'23"E 161.50 feet; thence continuing along said centerline N55°04'31"E 20.01 feet to a common point of the above-described parcel and Parcel No. 2 of Minor Land Partition No. 34-82.

ALSO TOGETHER WITH: A non-exclusive easement 30 feet wide lying South of and adjacent to the South boundary of the U.S.B.R. #5 Drain, said South boundary of drain being also the Northerly boundary of the above-described property. Said easement running from the West boundary of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 to the East boundary of SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, Township 40 South, Range 10 E.W.M.

1.2 The Assignor warrants that the sum of \$73,874.47 is now due to them with interest at ten and one-half percent (10½) from October 1, 1983 now due to them under the encumbrance

2. ASSIGNMENT AND MORTGAGE

and that the Assignor will not accept any prepayments or pay-offs upon said encumbrance without applying the excess proceeds to the obligation of Assignee herein.

1.3 In the event of default of the obligation hereinafter mentioned, the Assignor appoints the Assignee their attorney-in-fact with full power of substitution to enforce the obligations of the above-mentioned interests in real property and to collect the amounts due thereunder and apply the same to the obligation of the Assignor herein without prejudice to the other rights of the Assignee herein.

SECTION 2. CONVEYANCE:

For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the above described real property, together with the following personal property, to-wit:

- Buried main line
- 40 HP pump
- Fuel tank
- Model 60 John Deere tractor
- Old Caterpillar
- Hay elevator
- John Deere drill press
- 2 Chain Hay Loader

together with the appurtenances now or hereafter belonging to the property, and all the rents, issues and profits arising or to arise therefrom. All property subject to this mortgage is hereinafter referred to as the "Mortgaged Premises". Until default, Mortgagor may remain in possession of the mortgaged premises, and may manage and collect all revenues from the mortgaged premises.

SECTION 3. PURPOSE:

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained and contained in any loan agreement, security agreement or other agreement between Mortgagors and Mortgagee, and to secure the payment of a loan in the sum of Seventy-three Thousand, Eight Hundred Seventy-Four and 47/100 (\$73,874.47) DOLLARS, as evidenced by a promissory note together with interest payable on the unpaid balances thereof at the rates specified in the note. All covenants and provisions of this Mortgage shall bind the successors and assigns of Mortgagor and shall inure to the benefit of the successors and assigns of Mortgagee.

SECTION 4. WARRANTY OF TITLE:

At the time of execution and delivery of this Mortgage, Mortgagors are the owners of the Mortgaged Premises in fee simple. Mortgagors have the right and authority to mortgage the Mortgaged Premises as provided in this Mortgage, and the Mortgaged Premises are free and clear of liens and encumbrances. Mortgagors will defend Mortgagee's rights against any liens and encumbrancers other than those listed in this Mortgage.

SECTION 5. PAYMENT AND PERFORMANCE:

Mortgagor will pay, when due, the indebtedness secured by this Mortgage in accordance with the terms thereof. Mortgagor will strictly perform all obligations of this Mortgage. Mortgagor will promptly comply with all existing or future laws,

orders and regulations of all state, federal, municipal and local governments or any similar bodies affecting the mortgaged premises or its use.

SECTION 6. ASSIGNMENT OF ISSUES AND PROFITS:

Mortgagor hereby assign and transfer to Mortgagee the issues and profits, together with full power and authority to demand, sue for and collect the same in the name of Mortgagor, or in its own name, and to take possession of and manage the Mortgaged Premises or to cause a receiver to be appointed for such purpose and apply the income therefrom, after the costs of collection and management, to the reduction of the indebtedness secured hereby. The Mortgagor, by this Agreement, grant to the Mortgagee the right to take possession of the premises secured hereby. The Mortgagee deems necessary or advisable to perfect its interest in the collateral above described.

SECTION 7. DEFAULT:

7.1. Events of Default: The occurrence of any one or more of the following events shall constitute a default hereunder:

(a) Mortgagor's default in the timely payment of any indebtedness to Mortgagee when due;

(b) Mortgagor's failure to perform or observe all the provisions of this Mortgage;

(c) The happening of an event of default under any other agreement or security instrument between Mortgagors and Mortgagee;

(d) Mortgagor's insolvency or inability to pay their debts as they mature or Mortgagor's assignment for the benefit of creditors or filing of a voluntary petition in bankruptcy, or a voluntary petition seeking reorganization, or effecting a plan or other arrangement with creditors, or filing an answer consenting to or taking any other action indicating acquiescence in any involuntary petition pursuant to, or purporting to be pursuant to, any bankruptcy, reorganization or insolvency laws of any jurisdiction, or adjudication of Mortgagors as bankrupt or insolvent by any court of competent jurisdiction or appointment of a receiver for any substantial portion of Mortgagor's property.

7.2 Remedies on Default. If any default occurs, Mortgagee may, at its' option, declare the entire unpaid balance of principal and accrued interest secured by this Mortgage immediately due and payable, together with any prepayment penalties imposed by any agreement or security agreement between Mortgagors and Mortgagee, and foreclosure proceedings may be immediately commenced. The failure of Mortgagee to exercise any option given hereunder shall not be taken or deemed a waiver of its right to exercise its option as to any past or subsequent violation of any covenants or stipulations.

In addition to all other remedies provided herein, or by law, the Mortgagee, under the Assignment provisions of this agreement, may notify the payees under the obligations assigned to commence making payment to the Mortgagee.

SECTION 8. ATTORNEY FEES AND OTHER COSTS:

In the event suit or action is begun to foreclose this Mortgage, Mortgagors will pay, in addition to the costs and

disbursements allowed by law, such sum as the court may adjudge reasonable attorney fees in such suit or action, or any appeal therefrom. Mortgagors will also pay such sums as the court may adjudge reasonable for the necessary examination and search of the public records respecting the title to the mortgaged premises. The plaintiff in such suit or action may take judgment therein for such sums. Mortgagors will pay to Mortgagee all sums, including costs, expenses and reasonable agent and attorney fees, which Mortgagee may expend or become obligated for in any proceedings, legal or otherwise, involving the title to the mortgaged premises, or to establish, protect or sustain the lien of this Mortgage, or its priority, or in defending against liens, claims, rights, estates, easements or restrictions, or for evidences of title to the mortgaged premises. Interest shall be paid to Mortgagee on all such sums as the reate then payable on the indebtedness secured hereby. This Mortgage shall stand as security for payment of these sums and interest in like manner and effect as for payment of the indebtedness secured.

SECTION 9. MISCELLANEOUS:

9.1 Terminology: The word "Mortgagor" and the language of this instrument shall, where there is more than one Mortgagor, be construed as plural and be binding jointly and severally upon all Mortgagors and the word "Mortgagee" shall apply to any holder of this Mortgage.

9.2 Nonwaiver: No condition of this Mortgage shall be deemed waived unless expressly waived in writing by Mortgagee.

9.3 Notices: Whenever any notice, demand or request is required by the terms of this Mortgage or by any law now in existence or hereafter enacted, the notice, demand or request to Mortgagors at the last address actually furnished to Mortgagee, or at the Mortgaged Premises, and deposited in any post office station or letter box.

9.4 Applicable Law. This Mortgage shall be governed by the law of the State of Oregon and any questions arising hereunder shall be construed or determined according to such laws.

THE PARTIES have executed this Agreement as of the date first written.

ASSIGNOR-MORTGAGOR

BY: Fred G. Hess
Fred G. Hess

BY: Edith M. Hess
Edith M. Hess

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STATE OF OREGON)

County of Klamath)

ss. July 25, 1984.

Personally appeared the above-named FRED G. HESS
and EDITH M. HESS, husband and wife, and acknowledged the
foregoing instrument to be their voluntary act. Before



Reginald E. Cullen
Notary Public for Oregon
My Commission expires: 6/24/85

STATE OF OREGON,)

County of Klamath)

Filed for record at request of

on this 6th day of Aug. A.D. 19 84
at 1:42 o'clock P M, and duly
recorded in Vol. M84 of Mortgages
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EVELYN BIEHN, County Clerk

By [Signature] DeputyFee 24.00