

51975

K-37979

MORTGAGE

Vol. M85 Page 12661

THIS INDENTURE, made this 7th day of August, 1985, between Frank J. Cacka and Leona Cacka, husband and wife, and David A. Cacka and Monica N. Cacka, husband and wife, mortgagors, and Norwest Equipment Leasing, Inc., mortgagee

WITNESSETH, that for valuable consideration paid by mortgagee on behalf of mortgagor, the mortgagor does hereby grant, bargain, sell and convey unto the said mortgagee, its successors and assigns, those certain premises situated in the County of Klamath and State of Oregon, and described as follows:

See attached Exhibit "A" which is incorporated herein by reference.

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 upon said 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 said premises with the appurtenances unto the said mortgagee, his successors and assigns forever.

THIS CONVEYANCE is intended as a mortgage to secure the payment of the sum of One hundred seventy-nine thousand six hundred twenty and no/100----- Dollars (\$ 179,620.00) in accordance with the terms of that certain promissory note of which the following is substantially a true copy, to-wit:

See attached Exhibit "B", which is incorporated herein by reference.

The date of maturity of the debt secured by this mortgage is the date on which the last scheduled principal payment becomes due pursuant to the terms of the promissory note.

The mortgagor warrants that the proceeds of the loan represented by the above described note and this mortgage are for commercial purposes only. This is not intended as a consumer transaction.

This indenture is further conditioned upon the faithful observance by the mortgagor of the following covenants hereby expressly entered into by the mortgagor, to-wit:

The mortgagee acknowledges that Leona Cacka and Monica N. Cacka, have no vested interest in the real property described in Exhibit "A" attached hereto and incorporated herein as though fully set forth hereat, and are signing this mortgage as accomodation parties only.

'85 AUG 12 PM 3 04

That mortgagor is lawfully seized of said premises, and now has a valid and unencumbered fee simple title thereto, except for the following encumbrances as enumerated on that certain Preliminary Report Order No. K-37979 (attached hereto as Exhibit "C") issued by Klamath County Title Company: Exception Numbers 1 through 7 inclusive

and that he will warrant and defend the same against the claims and demands of all persons whomsoever;

That he will pay the said promissory note and all installments of interest thereon promptly as the same become due, according to the tenor of said note;

That so long as this mortgage shall remain in force he will pay all taxes, assessments, and other charges of every nature which may be levied or assessed upon or against the said premises when due and payable, according to law, and before the same become delinquent, and will also pay all taxes which may be levied or assessed on this mortgage or the debt thereby secured, and will promptly pay and satisfy any mechanics' liens or other incumbrances that might by operation of law or otherwise become a lien upon the mortgaged premises superior to the lien of this mortgage;

That he will keep all the improvements erected on said premises in good order and repair and will not commit or suffer any waste of the premises hereby mortgaged. At the request of the mortgagee, the mortgagor shall join with the mortgagee in executing one or more financing statements pursuant to the Uniform Commercial Code, in form satisfactory to the mortgagee and will pay for filing the same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the mortgagee;

That so long as this mortgage shall remain in force he will keep the buildings now erected, or any which may hereafter be erected on said premises insured against loss or damage by fire, with extended coverage, to the extent of insurable value in some company or companies acceptable to said mortgagee and for the benefit of both parties hereto as their interest may appear, and will deliver all the policies and renewals thereof to said mortgagee.

NOW, THEREFORE, if the said mortgagor shall pay said promissory note and shall fully satisfy and comply with the covenants hereinbefore set forth, then this conveyance shall be void, but otherwise to remain in full force and virtue as a mortgage to secure the payment of said promissory note in accordance with the terms thereof and the performance of the covenants and agreements herein contained; it being agreed that any failure to make any of the payments provided for in said note or this mortgage when the same shall become due or payable, or to perform any agreement herein contained, shall give to the mortgagee the option to declare the whole amount due on said note, or unpaid thereon or on

this mortgage, at once due and payable and this mortgage by reason thereof may be foreclosed at any time thereafter. And if the said mortgagor shall fail to pay any taxes or other charges or any lien or insurance premium as herein provided to be done, the mortgagee shall have the option to pay the same and any payment so made shall be added to and become a part of the debt secured by this mortgage, and draw interest at the rate of ten per cent per annum, without waiver, however, of any right arising from breach of any of the covenants herein.

In case a complaint is filed in a suit brought to foreclose this mortgage, the court shall, upon motion of the holder of the mortgage, without respect to the condition of the property herein described, appoint a receiver to collect the rents and profits arising out of said premises, and apply such rents and profits to the payment and satisfaction of the amount due under this mortgage, first deducting all proper charges and expenses of the receivership.

In the event of any suit or action being instituted to foreclose this mortgage, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in such suit or action and in the event of any appeal, the losing party agrees to pay such sum as the appellate court shall adjudge reasonable as the prevailing party's attorney's fees on such appeal; in any event the mortgagor agrees to pay all reasonable costs incurred by the mortgagee for title reports and title search, all such sums to be secured by the lien of this mortgage and included in the decree of foreclosure.

In construing this mortgage, it is understood that the mortgagor or mortgagee may be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, the masculine pronoun shall mean 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, the mortgagor has executed this instrument this 7th day of August, 1985; if a corporate mortgagor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

Frank J. Cacka
Frank J. Cacka

David A. Cacka
David A. Cacka

Leona Cacka
Leona Cacka

Monica N. Cacka
Monica N. Cacka

ACKNOWLEDGEMENT

STATE OF OREGON)

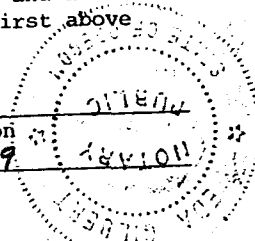
) ss:

County of Klamath)

On this 7 day of August, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared FRANK J. CACKA AND LEONA CACKA, husband and wife, known or identified to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Ela Gilbert
NOTARY PUBLIC for Oregon
Residing at: 6-1-89



STATE OF OREGON)

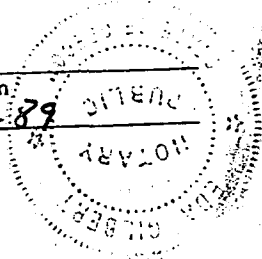
) ss:

County of Klamath)

On this 7 day of August, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID A. CACKA AND MONICA N. CACKA, husband and wife, known or identified to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Ela Gilbert
NOTARY PUBLIC for Oregon
Residing at: 6-1-89

MORTGAGEFrank J. Cacka and Leona Cacka, andDavid A. Cacka and Monica N. Cacka

TO

Norwest Equipment Leasing, Inc.

After recording return to:

Norwest Leasing, Inc.
Suite 930, Cargill Bldg.
7th St. & Marquette Ave.
Minneapolis, MN 55479-2052

STATE OF OREGON,)
County of Klamath) ss.

I certify that the within instrument was received for record on the _____ day of _____, 1985, at _____ o'clock _____ M., and recorded in book/reel/volume No. _____ on page _____ or as document/fee/file/instrument/microfilm No. _____

Record of Mortgages of said County.
Witness my hand and seal of County affixed.

Name _____ Title _____
By _____ Deputy _____

EXHIBIT "A"

A parcel of land situated in Section 16, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at the Southeast Corner of said Section 16; thence N. $89^{\circ} 07'$ W. on the State Line, 1523.13 feet; thence North 30.00 feet to the point of beginning of this description; thence North 847.32 feet to the Southwest line of the J-1-A Lateral; thence S. $31^{\circ} 01'$ E. on said Southwest line 994.86 feet; thence South on said Southwest line, 2.61 feet to a point lying 30.00 feet North of said State Line; thence N. $89^{\circ} 07'$ W. parallel to said State line, 512.70 feet to the point of beginning.



Norwest Equipment Leasing, Inc.
Suite 930, Cargill Building
7th Street and Marquette Avenue
Minneapolis, Minnesota 55479

EXHIBIT "B"

Promissory Note
12666

For value received, the undersigned, FRANK CACKA & DAVID A. CACKA hereby promises to pay to the order of Norwest Equipment Leasing, Inc. ("Debtor") at its office in Minneapolis, Minnesota, or at such other place as may be designated from time to time by the holder hereof, the sum of \$ 293,210.40 in installments according to the schedule set forth below; provided, however, that the undersigned and Debtor may agree to any other payment schedule, in which case any variations shall be set forth in the space provided for additional provisions. The first payment period shall begin on the 15th day of the month in which Debtor disburses the loan proceeds if disbursement is made on or before the 15th day of such month, and the first payment period shall begin on the last day of such month if disbursement is made during the balance of such month. The first installment shall be payable on the first payment due date set forth below (which may be the same as the date the first payment period begins). Subsequent installments shall be payable on the first day of each payment period beginning after the first payment period. The undersigned agrees that the date the first payment period begins may be left blank when this Note is executed and hereby authorizes Debtor to insert such date based upon the date the loan proceeds are disbursed.

PAYMENT SCHEDULE:

Date first payment period begins: August 15, 19 85
First payment due: August 15, 19 86
Number of installments: Seven (7)
Amount of each installment: \$ 41,887.20
Payment period (check one):
☐ Monthly
☐ Quarterly
☐ Semi Annually
☒ Annually
☐ Other—See Additional Provisions

ADDITIONAL PROVISIONS:

If any installment is not paid when due, then in addition to any other remedy Debtor may have hereunder, Debtor may impose and the undersigned shall pay a late charge of 5% of the amount of the delinquent installment but in any event not more than permitted by applicable law. Payments thereafter received shall be applied first to delinquent installments and then to current installments.

This Note may be prepaid in whole or in part at anytime and from time to time but only if accompanied by a prepayment premium of 2% of the principal amount prepaid. Any partial prepayment shall be applied to the last maturing installment or installments. Upon any prepayment in full, the unearned portion of the finance charge will be refunded under the Rule of 78s.

The following shall constitute an Event of Default hereunder: (a) failure to pay any installment hereunder when due; (b) the occurrence of an event of default as defined in any security agreement or mortgage securing this Note; and (c) the commencement of any bankruptcy or insolvency proceedings by or against the undersigned or any guarantor of this Note. Upon the occurrence of an Event of Default, Debtor may do any one or more of the following as it may elect: (i) upon written notice to the undersigned, declare the entire unpaid balance of the Note to be immediately due and payable, and the same (less unearned interest computed under the Rule of 78s as if this Note had been paid in full on the date it became due and payable) shall thereupon be and become immediately due and payable; (ii) exercise any one or more of the rights and remedies available to it under any security agreement or mortgage securing this Note or under any other agreement or by law.

The undersigned hereby waives presentment, notice or dishonor, and protest. The undersigned agrees to pay all costs of collection of this Note, including reasonable attorney's fees. The holder hereof may change the terms of payment of the Note by extension, renewal or otherwise, and release any security for, or party to, this Note and such action shall not release any accommodation maker, endorser, or guarantor from liability on this Note.

Dated June 12, 19 85

FRANK CACKA & DAVID A. CACKA
Borrower

By Frank Cacka

By David A. Cacka



EXHIBIT "C"

12667

KLAMATH COUNTY TITLE COMPANY
HOME OWNED SINCE 1905

TITLE INSURANCE • ESCROWS

MEMBER: OREGON LAND TITLE ASSOCIATION
AMERICAN LAND AND TITLE ASSOCIATION

R. E. Veatch, President
Darle Runnels, Executive Vice-President

PRELIMINARY TITLE REPORT

Order No. K-37979
Amount of Insurance \$179,620.00
Premium 640.00

To: Nor-West Leasing

We are prepared to issue a Title Insurance Policy in the amount shown above insuring the title to the property hereinafter described:

A parcel of land situated in Section 16, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:
Commencing at the Southeast Corner of said Section 16; thence N. 89° 07' W. on the State Line, 1523.13 feet; thence North 30.00 feet to the point of beginning of this description; thence North 847.32 feet to the Southwest line of the J-1-A Lateral; thence S. 31° 01' E. on said South west line 994.86 feet; thence South on said Southwest line, 2.61 feet to a point lying 30.00 feet North of said State Line; thence N. 89° 07' W. parallel to said State line, 512.70 feet to the point of beginning.

showing the title as of July 31, 1985 at 8:00 A.M.

vested of record in: Frank J. Cacka and David A. Cacka, An estate in fee simple as qualified by the following language in conveyance to the vestees to wit: "not as tenants in common, but as co-tenants with the right of survivorship so that upon the death of one of them the fee will vest in the survivor."

Subject to the printed exceptions, exclusions, and stipulations which are part of said policy and to the following:

1. The taxes for 1985-86 are now a lien, but not yet payable. The taxes for 1984-85 are paid in the amount of \$642.24. (Account #4111-1600-1000) (Key #107128)

2. The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. Taxes for the year 1984-85 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.

3. Liens and Assessments of Klamath Project and Klamath Irrigation District, and regulations, easements, contracts, water and irrigation

422 MAIN ST. / P. O. BOX 151 / KLAMATH FALLS, OREGON 97601 / (503) / 884-5155

12668

rights in connection therewith.

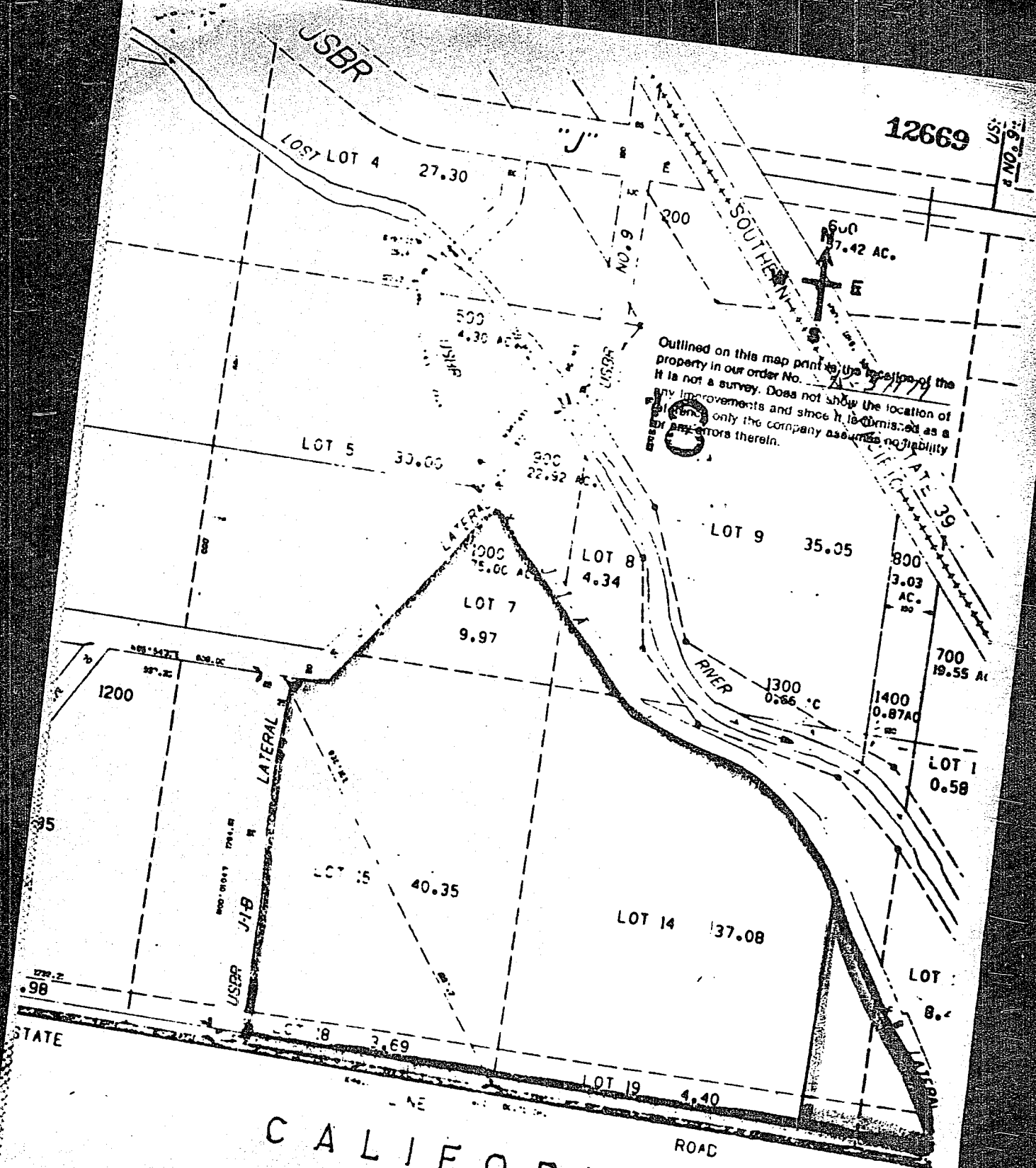
4. Any unpaid charges or assessments of Klamath Irrigation District.
5. Rights of the Public in and to any portion of the herein described premises lying within the limits of any roads or highways.
6. Pumping Agreement, including the terms and provisions thereof, given by Leonard R. McNeil and Hazel M. McNeil to Lloyd E. Lisk and Marjorie Lisk, dated August 30, 1950 and recorded September 21, 1950, in Deed Volume 242 on page 218, records of Klamath County, Oregon.
7. Easement, including the terms and provisions thereof, Leonard R. McNeil and Hazel M. McNeil to The United States of America, dated February 19, 1952 and recorded August 5, 1952 in Deed Volume 256 on page 137, records of Klamath County, Oregon.

No liability is assumed under this report until the premium is paid.

KLAMATH COUNTY TITLE CO.

BY:

Trudie Durant
Trudie Durant
Title Officer



Outlined on this map print is the location of the property in our order No. 12669. It is not a survey. Does not show the location of any improvements and since it is omitted as a plan only the company assumes no liability for any errors therein.

CALIFORNIA

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of August of 1985 at 3:04 o'clock P M., and duly recorded in Vol. M85 the 12th day of August on Page 12661

FEE \$37.00

By Evelyn Biehn County Clerk
Thos Smith