

86284

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FARM LEASE, Made as of the date set opposite the signatures of the parties hereto, between THE FEDERAL LAND BANK OF SPOKANE, a corporation (Lessor), and JAMES B. O'CONNOR (Lessee);

W I T N E S S E T H:

A. RECITALS: The parties recite as follows:

1. Desires of Lessor: Lessor is the owner of the Farm hereafter described and desires to lease the Farm to Lessee.
2. Desires of Lessee: Lessee desires to lease the Farm from Lessor.
3. Independent Determination: Lessee is not acting under any representation or promise of Lessor not contained in this Lease and has entered into this Lease on his own volition after making his independent determination of the facts and circumstances concerning the acreage leased, the condition and quality of the Farm, and the suitability of the Farm for Lessee's desired use.

B. AGREEMENT: For, and in consideration of, the covenants, agreements, and stipulations herein contained, the parties agree as follows:

1. Lease of Property: Lessor leases to Lessee, and Lessee rents from Lessor, the Property described in Exhibit "A", situate in Klamath County, State of Oregon, for agricultural and related purposes only.
2. Term: The term of this Lease is from effective date hereof to December 31, 1988, at Midnight, unless the provisions of Paragraph 3 below apply.
3. Sheriff's Sale: The term of this Lease is subject to a Sheriff's Sale set for April 13, 1988. If Lessor is not the successful bidder at the Sheriff's Sale and a third party should be the successful bidder, this Lease shall terminate upon Lessor giving Lessee written notice of such sale, and Lessor shall reimburse Lessee for Lessee's expenses incurred to date of Sheriff's Sale, not to exceed \$1,000.00.
4. Rent: Lessee shall pay Lessor, without demand, the sum of approximately \$17,810.00 as rent for the entire term of the Lease in the following manner: Lessee shall remit to Lessor, within 10 days of receipt, all payments made to Lessee from Government 0-92 Program as Lessee receives the same. To the extent the payments from the Government 0-92 Program should be less than the sum of \$17,810.00, Lessee shall remit the difference by no later than 60 days following the expiration of this Lease.
5. Lessor's Obligations: Lessor shall have the following obligations and duties:
 - a. Taxes And/Or Assessments on Farm: To pay all ad valorem taxes and assessments levied or assessed against the Farm by any county, governmental body or political subdivision of the State of Oregon having the power to levy and/or assess and collect any such tax or assessment.

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b. Irrigation and Drainage Charges: To pay all assessments or charges of any duly constituted irrigation, drainage, or improvement district pertaining to the providing of irrigation water and/or drainage, or related items, services, or maintenance for the benefit of the Farm described in this Lease, provided, however, Lessor shall not be obligated to pay for any cost of irrigation water used in excess of the average used during the immediately preceding 5 years.

c. Utilities: To pay one-half the cost of all utility charges for the operation of any irrigation or drainage pumps upon the Farm.

d. Quiet Possession: To warrant and defend Lessee's possession of the Farm against any and all persons as long as this Lease remains in effect.

e. Cooperate In Governmental Agricultural Programs: Where the governmental agency administering any governmental agricultural program available for the Farm in which Lessee desires to participate requires the cooperation of Lessor with Lessee, to do all acts necessary to cooperate with Lessee's participation in such governmental agricultural program.

6. Lessee's Obligations: Lessee shall have, in addition to other obligations of Lessee, the following obligations and duties:

a. Pay Rent: To pay the rent in the manner and form specified herein when due.

b. Comply With Requirements of Government 0-92 Program: To maintain the Farm in such manner that the Farm will meet requirements of the Government 0-92 Program.

c. Use of Farm: To use the Farm for agricultural purposes only; to occupy, till, and in all respects, cultivate the Farm during the Lease term in a farmer-like manner according to the usual course of farming practice in the county; to operate, manage, conserve, and maintain the Farm in a high state of husbandry at Lessee's sole cost and expense; to comply with all applicable laws, ordinances, regulations, and rulings of any governmental or quasi-governmental entity or agency; not permit the Farm to be used for illegal purposes; not commit any waste or damage to the Farm; and, at the expiration of the term of this Lease, redeliver the Farm to its owner in as good condition as the same now is, or later improved, reasonable wear and tear alone excepted. This covenant shall include, but not be limited to, compliance with all minimum requirements of all grantors or lessors of appurtenant leases, permits, or licenses however evidenced.

d. Permanent Pastures, Etc.: Not do any of the following without the written consent of Lessor: plow permanent pasture or meadowland; cut live trees for sale or personal uses (except for the benefit of Lessor); remove sand, gravel, minerals, geothermal energy, or any subsurface material of any kind; erect, or permit to be erected, on the Farm any non-removable structures or buildings; to add any improvements to any structure or building; raze or remove any permanent structure or building or other permanent improvement.

- e. Comply With Law: To conduct Lessee's business in an orderly fashion, with strict conformity to all applicable laws, ordinances, rules or regulations which are now or which may be hereafter enacted by any government or governmental agency, and said Lessee will not permit anything to be done upon the Farm which will in any way conflict with the said applicable laws, ordinances, rules or regulations.
- f. Maintenance: To keep and maintain the buildings used by Lessee and irrigation systems (including, without limiting the generality of the foregoing, pumps, electric motors and electric power, pipelines, culverts, drains, and ditches), and fences, in the same condition as they now are, or may be later improved, at Lessee's sole cost and expense, reasonable wear and tear and the acts of Lessor alone excepted. This covenant shall include all labor, all parts, and all cost of replacement except to the extent such replacement costs should be covered by insurance maintained by Lessor. To the extent that new materials or parts are required for such maintenance of irrigation pumps which costs more than \$400.00, the same shall be provided and paid for by Lessor; otherwise all other new material or parts required for maintenance shall be provided and paid for by Lessee. All parts and materials installed in or on irrigation pumps are accretions.
- g. Utilities: To pay one-half the cost of all utility charges for the operation of any irrigation or drainage pumps upon the Farm and to pay all the cost of domestic utility charges upon the Farm.
- h. Cost of Seed: To pay all of the cost of seed for any crops to be grown upon the Farm.
- i. Cost of Planting: To pay all of the cost of planting any crops to be grown upon the Farm.
- j. Cost of Fertilizing: To pay all of the cost of fertilizing the Farm. Such costs shall include application of the same.
- k. Cost of Cultivation: To pay all of the cost of cultivating any crop to be grown upon the Farm.
- l. Cost of Spraying: To pay all of the cost of spraying the Farm. Such costs shall include application of same.
- m. Cost of Storage: To pay all of the cost of storing any crop grown pursuant to this Lease. The cost of storage shall include transportation and storage upon harvest.
- n. Cost of Materials: To pay all of the cost of materials necessary for the normal maintenance of existing fences and buildings used by Lessee.
- o. Replace Improvements: To replace improvements damaged or destroyed by fire as soon as practicable to the extent that insurance proceeds will pay the cost of such replacement.

- p. Control Weeds, Pests And Rodents: To use all reasonable means to control weeds and thistles, including spraying of grain and alfalfa fields, and to control injurious insect pests and rodent infestations, as Lessee deems necessary or as Lessor shall direct.
- q. Plant Specified Crops: To plant the Farm only to the crops allowed by the Government 0-92 Program during the term of this Lease.
- r. Not Use Excessive Water: Not use an excess of water in the irrigation of crops on the Farm; this to the end of preventing an excessive build-up of salt content, water-logging and other similar conditions from developing.
- s. Furnish Implements and Labor, Etc.: To furnish all farming implements, tools, work, seed, tractors, trucks, labor, and everything necessary to perform Lessee's covenants pertaining to the use of the Farm.
- t. Haul Materials: To haul all materials and/or parts for the maintenance and repair of Farm improvements.
- u. Avoid Liens: To, at all times, protect Lessor and save Lessor harmless from and against any and all liens and/or claims of liens upon or against the Farm, improvements or equipment, or any part thereof, arising or created by, under or through Lessee, or any persons employed by Lessee, or any persons under contract with Lessee.
- v. Indemnify Lessor: To save and hold Lessor harmless from, and to indemnify Lessor against, any of the following that may result by, from, or in any manner grow out of, any condition or present or future lack of repair of all, or any part of, the Farm (or improvements thereon), the past, present, or future condition or use of all, or any part of, the Farm (or improvements thereon), or any act, omission, neglect, or conduct of any person upon said Farm: liability to any person on the Farm, for or on account of any death or injury to such person or liability for any damage to property in or about the Farm. This covenant shall extend to (without limiting the generality of the foregoing) claims, demands, judgments, court costs, and attorney fees (both at trial or on appeal). This covenant shall not extend to any death or injury to any person on the Farm with the permission of Lessor or to any damage to property in or about the Farm by any person on the Farm with the permission of Lessor. As part performance of this covenant, Lessee shall maintain the comprehensive liability insurance required of Lessee by this Lease.
- w. Maintain Insurance: To maintain in full force and effect a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of Oregon, that will insure Lessee against liability for injury to persons and property and for death of any person or persons occurring in or about the premises. The liability under such insurance shall not be less than \$500,000.00 for any one person injured or killed or any one accident, and not less than \$50,000.00 for property damage. Lessee shall provide Lessor with copies or certificates of all policies.

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x. No Assignment: Not to assign or hypothecate this Lease, nor any interest herein, nor let or underlet said Farm, or any part thereof, without consent in writing of Lessor first had and obtained, and that neither this Lease, nor any interest herein of Lessee, shall be assignable or transferable in proceedings by or against Lessee in execution, or in any manner by operation of law; and that any assignment, transfer or sublease, voluntary or involuntary, which shall be made in contravention of the provisions hereof, shall constitute a breach of this Lease, and shall give Lessor the right or rights for breach of any covenant herein provided. Lessor's consent to one assignment, sublease, hypothecation, or occupancy or use by another party shall not be a consent to any further or later assignment, sublease, hypothecation or occupancy or use by a further party.

y. Permit Lessor Entry: To allow Lessor, or anyone designated by Lessor, to enter the premises at any reasonable time to inspect the property, to work and make improvements as Lessor shall deem expedient, provided such entry and work by Lessor does not injure crops already growing on the Farm.

z. Return of Farm: To, upon the expiration or sooner termination of this Lease, quietly yield possession of the Farm unto Lessor or Lessor's agents or assigns in as good order and condition as reasonable use and wear thereof permit, damage by the elements excepted.

aa. Not To Hold Over: Not to retain possession of the Farm after the termination of this Lease and, if such possession is retained, to retain the same not as a new rental, but only at the will of Lessor.

bb. Waiver of Notice: Lessee expressly waives any notice required by ORS 105.105 through 105.165, including, without limiting the generality of the foregoing, specifically waives the notice provided for in ORS 105.120.

7. Acceptance of Farm: Lessee hereby acknowledges that Lessee is familiar with the quality of the soil and all soil conditions of the Farm and is also familiar with the irrigation accessories and improvements upon said Farm; Lessee accepts the Farm, without any warranty or guaranty on the part of Lessor as to said Farm, and Lessee accepts the Farm as it now is.

8. Condemnation: If any portion of the Farm should be taken by any governmental agency or other entity having the power of eminent domain, or if any portion of the Farm should be sold to such governmental agency or body having the power of eminent domain in lieu of eminent domain proceedings, Lessor shall retain all proceeds from any such taking or sale. In the event any such taking or sale should exceed more than 50% of the farmable acreage of the Farm or the Farm shall become uneconomical to farm by reason of such sale or taking, either party may rescind this Lease. To the extent that there should be any growing crops on the Farm at the time of any such sale or taking by eminent domain proceedings, and compensation should be payable therefor, the proceeds allowed for growing crops shall be divided between Lessor and Lessee in the same proportion as the crop would be divided as rent.

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9. Arbitration: In the event of any dispute concerning any term, covenant, or provision of this Lease, either party may submit such controversy to binding arbitration in accordance with the rules and regulations of the American Arbitration Association, and the parties shall be bound by the arbitration results. The findings of an arbitrator as provided in this paragraph shall be final and binding on the parties. The arbitrators shall decide, in addition, whether any party is entitled to recover costs, including, but not limited to, accounting and appraisal fees and the fees of other experts. Venue for arbitration under this paragraph shall be proper only in Klamath Falls, Oregon. The parties intend to make the submission to arbitration provided for in this paragraph an express condition precedent to any court action except for the breach of Lessee's covenants to pay or perform the obligations set forth in this Lease under the category of "Rent" or for any action to recover possession of the Farm. The provisions of Oregon Revised Statutes pertaining to arbitration are specifically incorporated into this Lease; provided, however, said provisions shall not be deemed to impair or limit the provisions of this paragraph but shall be deemed to apply only to the extent necessary to implement and further the arbitration proceedings provided for in this paragraph.

10. Default of Lessee and Remedies of Lessor: Time is agreed to be the essence of this Lease. The following provisions shall govern what constitutes Lessee's default and the Lessor's remedies therefor:

a. Events Of Default: Lessee shall be in default under this Lease upon the happening of any of the following events or conditions:

(1) Failure To Pay Rent: Lessee's failure to pay the rent timely.

(2) Insolvency, Etc.: Insolvency of Lessee, business failure of Lessee, appointment of a receiver for Lessee by a State court, assignment by Lessee for benefit of Lessee's creditors, transfer of Lessee's interest herein by operation of law, levy or execution upon Lessee's interest herein by a creditor of Lessee, or the commencement of any proceeding under any state bankruptcy or insolvency law by or against Lessee, or any one or more of the foregoing.

(3) Failure of Lessee to Perform After Notice: Failure of Lessee to perform any of Lessee's covenants (other than non-performance specified in the immediately preceding Subparagraphs) after 10 days' written notice by Lessor to Lessee of such non-performance and failure.

b. Remedies For Default: In the event of Lessee's default as aforesaid, Lessor shall have the following cumulative rights, which Lessor may, at Lessor's election, exercise sequentially or contemporaneously:

(1) Recover For Breach: Pursue any remedy provided by law to recover for the breach and continue the Lease in force.

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(2) Re-Enter Farm And Carry Out Lessee's Covenants: Re-enter the Farm and take full possession of the Farm and to do what is reasonable and necessary to carry out properly Lessee's covenants, or to repair the damage, and to this end, Lessor may furnish all the labor, machinery, equipment, fertilizer, seed, and materials necessary to carry out Lessee's covenants and charge Lessee's share of the costs of such operations or the amount of such damage, or both to Lessee, the amount of such charge to become a lien against Lessee's farm products.

(3) Declare Lease Forfeited: Declare the Lease forfeited and re-enter the Farm and take possession of the Farm and remove Lessee, Lessee's property, and all persons claiming by or through Lessee, therefrom, and recover all damages provided by law.

(4) Obtain Receiver: Obtain, ex parte from a court of competent jurisdiction, appointment of a receiver to take possession of Farm, and/or all accretions thereto, and/or all Government 0-92 Program payments.

For the purposes of this paragraph, damages shall include worth at time of award of amount by which the unpaid rent for balance of the term after the time of award exceeds amount of such rental loss for the same period that Lessee can prove could be reasonably avoided. Nothing herein contained shall be deemed to prevent or prohibit Lessor from reletting Farm in an effort to mitigate damages, from implementation of all remedies now or hereafter provided by law, nor preventing Lessor from electing any part of the remedies available to Lessor.

11. Nonwaiver: Lessor's waiver of a breach of a covenant or condition of this Lease is not a waiver of the covenant or condition itself, or any subsequent breach of it, or of any other covenant or condition herein. Lessor's subsequent acceptance of rent herein is not a waiver of any preceding breach by Lessee of a covenant or condition of this Lease, other than of Lessee's failure to pay when due the rent accepted.

12. Attorney Fees: In the event either party institutes any suit or action against the other to recover any rent, or for breach of any agreement or condition herein contained, or if any summary action be brought by Lessor for forfeiture of this Lease or to recover possession of said premises, prevailing party shall recover from other party reasonable attorney fees to be fixed by the court for both trial and on appeal.

13. Notices: Any notice by any party to the other required by this Lease shall be deemed to have been fully given when written and deposited in a sealed envelope with the United States Postal Service as certified mail with postage prepaid and addressed to the party to receive the same at the following addresses:

Lessor
The Federal Land Bank of Spokane
c/o Farm Credit Services
P.O. Box 148
Klamath Falls, OR 97601

Lessee
James B. O'Connor
4500 O'Connor Road
Klamath Falls, OR 97603

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14. No Partnership And Lessee Independent Contractor: Notwithstanding anything else provided herein, nothing contained herein shall be construed as creating a general partnership between Lessor and Lessee. Lessee shall, at all times, be an independent contractor and manner and means of Lessee's performance of Lessee's covenants shall be Lessee's responsibility. Lessee shall be entirely and solely responsible for Lessee's own acts, and acts of Lessee's agents, employees, and subcontractors engaged in Lessee's undertaking specified in this Lease.

C. DEFINITIONS: The following terms shall have the following meanings:

1. Lease: The term "Lease" shall mean this instrument.
2. Farm: The term "Farm" shall mean the real property and the irrigation pumps set forth in the attached Exhibit "A".
3. Sheriff's Sale: The term "Sheriff's Sale" shall mean the judicial sale in foreclosure by the Sheriff of Klamath County, Oregon, pursuant to Action No. 87-165 CV in Klamath County Circuit Court, Klamath Falls, Oregon.
4. Government 0-92 Program: The term "Government 0-92 Program" shall mean a Contract to Participate in the 1988 Price Support and Production Adjustment Programs with the Commodity Credit Corporation of the U.S. Department of Agriculture.
5. Governmental Entity: The term "Governmental Entity" shall mean United States of America, the State of Oregon, County of Klamath, Oregon, and any political subdivision, municipal corporation, quasi-governmental entity, or agency thereof.

D. GENERAL PROVISIONS: This Lease shall be subject to the following provisions which shall apply to each portion of it as the circumstances and context may require:

1. Governing Law: This Lease shall be construed by the law of the State of Oregon, regardless of where signed.
2. Severability: All provisions contained in this Lease are severable, and in the event any provision shall be held to be invalid by any court of competent jurisdiction this Lease shall be interpreted as though the invalid provision was not contained in it.
3. Obligations Joint and Several: All obligations created by this Lease shall be joint and several.
4. Headings: The headings contained in this Lease are for convenience only and are not to be construed as part of this Lease.
5. Mutuality of Preparation: This Lease shall be construed as prepared by both Lessor and Lessee.
6. Pronouns: Pronouns used in this Lease shall be construed in accordance with the appropriate gender or neuter, and as either singular or plural, as the context requires.

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7. Exhibits: Any exhibit attached to this Lease is incorporated into this Lease as though fully set forth at the place at which reference to the exhibit is made.

8. Independent Counsel: Lessor and Lessee have each had opportunity to be represented by independent counsel of their own choice, which counsel has not been compensated directly or indirectly by the other party.

9. Binding Effect: Subject to the provisions hereinabove contained against the transfer, assignment and sublease, this Lease shall bind and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

10. Entire Agreement: This Lease embodies the entire agreement of the parties. It may not be modified or terminated except as provided herein, or by other written agreement.

SIGNED on the date set opposite the signatures of the parties.

DATE

4-12-88

SIGNATURES

JAMES B. O'CONNOR
JAMES B. O'CONNOR, Lessee

THE FEDERAL LAND BANK OF SPOKANE, Lessor

By:

Ann L. Hilton
SP CREDIT OFFICER
(Name & Title)

STATE OF OREGON, County of Klamath) ss: 4-12, 1988

Personally appeared before me the above-named JAMES B. O'CONNOR and acknowledged the foregoing instrument to be his voluntary act and deed.

(SEAL)

Margaret John
NOTARY PUBLIC FOR OREGON
My Commission Expires: 9-12-90

STATE OF OREGON, County of Klamath) ss: 4-12, 1988

Personally appeared before me, Ann L. Hilton, known to me to be the SP CREDIT OFFICER of the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and that it executed the same, and on oath stated that he was authorized to execute said instrument.

(SEAL)

Margaret John
NOTARY PUBLIC FOR OREGON
My Commission Expires: 9-12-90

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EXHIBIT "A"

The following described real property situate in Klamath County, Oregon, to-wit:

PARCEL 1:

Township 40 South, Range 9 East of the Willamette Meridian:

Section 16: SW $\frac{1}{4}$
Section 23: E $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$

PARCEL 2:

Township 40 South, Range 9 East of the Willamette Meridian:

Section 14: SE $\frac{1}{4}$, the SW $\frac{1}{4}$
Section 15: SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, all that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and of the S $\frac{1}{2}$ NW $\frac{1}{4}$ described as follows: Beginning at the corner common to Sections 9, 10, 15, and 16; thence East 183 feet; thence South 38°43' West 25 feet; thence South 7°30' West 370 feet; thence South 20°00' West 385 feet; thence South 33°15' East 425 feet; thence South 12°00' East 435 feet; thence South 56°30' East 350 feet; thence South 43°20' East 290 feet; thence South 18°30' East 300 feet; thence South 27°45' East 250 feet; thence South 80°00' East 190 feet; thence North 76°30' East 520 feet; thence South 76°00' East 345 feet; thence South 89°00' East 490 feet; thence South 55°30' East 30 feet; thence South to the Southeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15; thence West along the South line of said NW $\frac{1}{4}$ of said Section 15, to the quarter corner common to Sections 15 and 16; thence North along the section line to point of beginning.

Section 16: W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and the SE $\frac{1}{4}$

Section 22: E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 23: E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$

Section 26: NW $\frac{1}{4}$ NE $\frac{1}{4}$

Township 40 South, Range 9 East of the Willamette Meridian, Portion of Section 36.

Together with the following irrigation equipment:

- 1 25 HP G.E. motor, Model #SK1364GG, with a Berkeley turbine pump, #7836931;
- 1 30 HP Century electric motor, #6323051-01, with a Berkeley turbine pump, #7836931;
- 1 75 HP U.S. electric motor, #1183848, with a Berkeley 10-lift turbine pump, #6960293; and
- 1 60 HP Century electric motor, #6-339171-01, with a Berkeley turbine pump, #7837018.

EXHIBIT "A"

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Farm Credit Services the 15th day of April A.D. 19 88 at 12:07 o'clock P M., and duly recorded in Vol. M88 of Deeds on Page 5808
By Evelyn B. Bohn County Clerk
Bernetha X. Ketch

FEE \$50.00