

THIS MORTGAGE, made the 7th day of December, A. D. 1939, between I. M. SMITHWICK and Marianne SMITHWICK, his wife, both of the County of Eureka, State of Nevada, the parties of the first part, mortgagors, and R. I. SMITHWICK of the County of Eureka, State of Nevada, the party of the second part, mortgagee,--

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

THAT WHEREAS, the said mortgagors are justly indebted to the said mortgagee in the sum of THREE THOUSAND and no/100 DOLLARS (\$3,000.00), lawful money of the United States of America, evidenced by a certain promissory note, bearing even date with these presents, which said promissory note is in the words and figures following, to-wit:--

\$3,000.00

Elko, Nevada, December 7, 1939

On or before December 7, 1944, without grace, for value received, we, jointly and severally, promise to pay to the order of R. I. SMITHWICK, at Elko, Nevada, or wherever payment shall be demanded in the State of Nevada, or elsewhere, at the option of the holder hereof, THREE THOUSAND and no/100 DOLLARS (\$3,000.00), in current lawful money of the United States with interest in like money, at the rate of six per cent (6%) per annum, from date hereof until paid. The makers and endorsers hereof waive demand, protest, notice and diligence. We, jointly and severally, further promise that if this note is not fully paid at maturity, to pay all costs and expenses, including a reasonable attorney's fee, that may be incurred in collecting this note, or any part thereof, by suit.

Interest payable annually.

I. M. SMITHWICK

MARIANNE SMITHWICK

NOW THIS MORTGAGE WITNESSETH:-

That the said mortgagors, for and in consideration of the premises, and the sum of One Dollar (\$1.00) to them in hand paid by the said mortgagee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, conveyed, confirmed and set over, and do by these presents grant, bargain, sell, assign, convey, confirm and set over, unto the said mortgagee, his heirs and assigns forever, all those certain chattels and that certain personal property situate in the County of Eureka, State of Nevada, and particularly described as follows, to-wit:-

One Ford Pickup Auto truck, one-half ton capacity, Model 1938

One Plymouth Sedan Automobile (1937),  
Factory No. P4-442466

One five (5) room house (Stucco), one garage (frame building) used in connection with said house, which house and garage are situated about three hundred (300) feet southerly from the Southern Pacific Depot in Beowawe, Nevada, and belong to the mortgagors although the same are situated upon lands belonging to other parties, but are not a part of the lands by agreement.

All sums secured by any of the terms of this mortgage are hereby declared to be a lien upon the property above described and this mortgage is intended to secure, and the mortgagors do hereby mortgage the above described property and the whole thereof to the said mortgagees for the purpose of securing:-

First:- The performance of the promises and obligations of this mortgage and the payment of the indebtedness above described, with interest, as evidenced by the promissory note hereinabove set forth.

Second:- The payment of a reasonable attorney's fee

in case suit is started for the collection of said note, and the payment of all costs and expenses of such suit, whether said suit be prosecuted to judgment or not, and also all costs of any sale made hereunder without court proceedings, including in case of such sale, an attorney's fee equal to fifteen (15) per cent of the amount due at the date of such sale upon the principal and interest of the promissory note above set forth.

Third:- The payment in lawful money of the United States of all sums expended or advanced by the mortgagee, for taxes or assessments levied or assessed against the property secured hereby, or for any other purpose provided for by the terms of this mortgage, together with interest upon any such sums from the date of payment by the mortgagee until repaid at the rate of six per cent (6%) per annum.

Fourth:- The payment in lawful money of the United States of any and all moneys other and in addition to those expressly mentioned herein, that may hereafter become or be due or payable from said mortgagors to the said mortgagee from any cause whatsoever, not exceeding the sum of \$2,000.00.

These presents are upon the express condition that if all sums of money secured hereby to be paid shall be paid, at the times and places and in the manner herein mentioned, then, and in that case, these presents and the estate hereby mentioned shall cease, determine and be void, and the said mortgagors for themselves and their heirs, executors, administrators and assigns, do hereby covenant, promise and agree to pay to the said mortgagee, his heirs, and assigns, in lawful money of the United States, all sums secured hereby to be paid, as aforesaid, at the times and in the manner herein and in said promissory note specified, and if default shall be made in the payment of the principal or interest, or any part

thereof, respectively, as provided in the promissory note herein-  
above set forth, at the time in said note specified for the payment  
thereof, then, and in any such case, the whole of said principal  
sum which shall then remain unpaid, shall forthwith become payable,  
although the time expressed in said note for the payment thereof  
shall not have arrived, and in the event of such default, suit  
may be immediately brought by the mortgagee, his heirs and assigns,  
and a decree be had to sell the said property and premises, with  
all and every of the appurtenances or any part thereof, in the  
manner prescribed by law, and out of the money arising from such  
sale there shall be paid the principal and interest due upon said  
promissory note, together with the costs and charges of making  
such sale, including attorney's fees and all other sums secured  
by these presents, and any overplus shall be paid over to the  
mortgagors, their heirs, executors, administrators and assigns.

It is expressly covenanted that the mortgagee may  
become the purchaser of the mortgaged property, or any part thereof,  
at any sale under any of the terms of this mortgage.

The mortgagors, for themselves and their heirs,  
executors, administrators and assigns, hereby covenant, promise and  
agree to pay and discharge as soon as due all taxes, assessments,  
liens or other encumbrances now subsisting or hereafter to be laid  
or imposed upon said property and premises, including taxes, if any  
are levied or assessed upon this mortgage, or upon the debt secured  
hereby, and hereby waive the right to treat the payment of such  
taxes or assessments as a payment on the debt hereby secured, or  
as being to any extent a discharge thereof. In case said taxes,  
assessments, liens, or encumbrances so agreed to be paid be not so  
paid, then the mortgagee being hereby made the sole judge of the  
legality thereof, may, without notice to the mortgagors, pay such

taxes, assessments, liens or encumbrances, or cause the same to be removed by suit or otherwise, all at the cost of the mortgagors.

The mortgagors further expressly covenant and agree for themselves and their heirs, executors, administrators and assigns, to repay to the mortgagee, his heirs and assigns, upon demand, any and all sums which may be advanced by the mortgagee under any of the terms of this mortgage, together with interest thereon at the rate of six per cent (6%) per annum, from date of payment until repaid to mortgagee.

The following covenants, Nos. One; Two (Fifteen per cent); Three (six per cent); Four; Five; Six; Seven (\$\_\_\_\_\_); Eight; Nine; Ten; Eleven; Twelve; Thirteen; Fourteen; and Fifteen of Section 1 of an Act entitled, "An Act relating to mortgages of real and personal property, and to provide that certain agreements covenants, obligations, rights and remedies thereunder may be adopted by reference," approved March 23, 1927, are hereby adopted and made a part of this mortgage.

IN WITNESS WHEREOF, the mortgagors have executed these presents the day and year first above written.

J. M. S. Smithwick  
Marianne Smithwick

STATE OF NEVADA )  
COUNTY OF Eads ) ss.

On this 7th day of December, A. D. 1939, personally appeared before me, a Notary Public in and for the said County and State,- I. M. SMITHWICK and Marianne SMITHWICK, his wife,- known to me to be the persons described in and who executed the above and foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

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

*H. M. Orville*  
- Notary Public -

My commission expires Jan 20-1943

File No. 23216

Filed at the request of

H. U. Castle

November 11-1959

at 11:20 A.M.

Peter Merialdo

Recorder

COPY