

1 THIS MORTGAGE, Made this 29th day of March, 1973, by MELVIN D.
2 FIEGI and VIRGINIA FIEGI, husband and wife, hereinafter called "MORTGAGOR"
3 to W. V. MEADE, hereinafter called "MORTGAGEE";

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

5 That Mortgagor, for valuable consideration, receipt of which is
6 hereby acknowledged, does hereby grant, bargain, sell, convey, mort-
7 gage, and confirm unto Mortgagee, his heirs, executors, administrators,
8 successors, and assigns, the following described real property situate
9 in the County of Klamath, State of Oregon, described in Exhibit "A"
10 attached hereto and thereby made a part hereof as though fully set
11 forth hereat.

12 TOGETHER WITH:

13 1. The tenements, hereditaments, and appurtenances now or
14 hereafter used or usable in connection with the above described real
15 property;

16 2. All leases, permits, licenses, privileges, rights-of-way,
17 and easements, written or otherwise, now held by Mortgagor, or here-
18 after issued, extended or renewed;

19 3. All improvements now on or hereafter placed upon said real
20 property during the term of this mortgage, including all fixtures, now
21 or hereafter a part of, or used in connection with, said improvements.

22 4. All rights to the use of water for irrigation of said real
23 property and for domestic use thereon to which said real property is
24 now or may hereafter become entitled, or which may hereafter be used on
25 said real property, however the same may be evidenced, together with
26 all shares of stock or shares of water, if any, in any ditch or
27 irrigation company which in any manner entitled the legal or equitable
28 owner of said real property to water for irrigation or domestic purposes
29 upon said real property.

30 This mortgage is given to secure the following:

31 (a) Performance by Mortgagor of the covenants and agreements
32 of Mortgagor contained in this mortgage instrument;

1 (b) The payment of that certain promissory note of even
2 date in the principal sum of \$7,100.00 with interest as provided
3 in said note, payable to the order of Mortgagee, a copy of which
4 is attached hereto and thereby made a part hereof as though fully
5 set forth hereat; and

6 (c) Payment of any sum or sums advanced, incurred, or paid
7 by Mortgagee, to, for, or on account of Mortgagor as provided
8 in this mortgage instrument.

9 To have and to hold the said mortgaged property to the said Mortgagee,
10 his heirs, executors, administrators, successors and assigns until
11 the obligations secured by this mortgage instrument have been fully
12 discharged.

13 MORTGAGOR COVENANTS AND AGREES:

14 1. Warranty of Title: That he is lawfully seized of the above
15 described real property in fee simple, has good right and lawful
16 authority to mortgage the same, and that said real property is free
17 from all encumbrances, except as above set forth, and that Mortgagor
18 will warrant and defend the same forever against the lawful claims
19 and demands of all persons whomsoever, and this covenant shall not
20 be extinguished by any foreclosure of this mortgage instrument, but
21 shall run with the land.

22 2. Waiver of Homestead and Exemption: That he does hereby
23 release and waive all rights under and by virtue of any homestead or
24 exemption laws now in force, or which may hereafter become law.

25 3. Prompt Performance and Payment: To perform all obligations
26 and pay all sums of money (both principal and interest at the rates
27 specified in the note or in this mortgage instrument) secured hereby
28 promptly when due.

29 4. Protection of Security: To keep the mortgaged property,
30 including, but not limited to, buildings, structures, fixtures,
31 permanent plantings, trees, and orchards, if any be in existence on
32 the date hereof, in good condition and repair not to remove or

1 demolish nor permit the removal or demolition of any thereof; to
2 comply with all laws, rules and regulations made by any duly constituted
3 authority applicable to the mortgaged property; to keep the
4 mortgaged property free from liens of every kind; not to commit nor
5 permit any waste to or on the mortgaged property; and not to permit
6 nor to commit anything which shall impair the security created by
7 this mortgage instrument.

8 5. Payment of Taxes and Assess mts: To pay regularly and
9 seasonably, and before the same shall become delinquent, all taxes,
10 assessments, and charges of whatever nature (including additional
11 charges by reason of change of use) levied and assessed against the
12 mortgaged property, or any part thereof.

13 6. Fire Insurance: To keep buildings and improvements now on
14 or hereafter placed upon the above described real property insured
15 against loss by fire or other casualty in an amount not less than the
16 maximum insurable value thereof as determined by the insurance carrier
17 and shall obtain, at his own expense, an insurance endorsement thereon
18 providing for loss payable to Mortgagee and Mortgagor as their
19 respective interests may appear. The policy or policies of insurance
20 shall be delivered to Mortgagee, or in lieu thereof, a certificate of
21 such insurance may be provided by Mortgagor and delivered to Mortgagee.
22 If a loss should occur for which insurance proceeds shall become pay-
23 able, the Mortgagor may elect to either rebuild or repair the portion
24 of the building or improvements so destroyed, or apply the proceeds
25 to payment of the unpaid balance of principal and interest secured by
26 this mortgage instrument. If the Mortgagor elects to rebuild, he shall
27 sign such document as may be required by Mortgagee to guarantee the appli-
28 cation of the insurance proceeds to the cost of such building or repair.
29 If the Mortgagor elects to apply the insurance proceeds toward payment
30 of the obligation secured by this mortgage instrument, any such sums
31 so received by Mortgagee shall not be in lieu of, nor credited to, the
32 next regular installment, but shall be applied by Mortgagee first to

1 interest accrued to the date of such payment and then toward the reduction
2 of principal.

3 7. Condemnation: In the event any governmental agency or
4 entity having the power of eminent domain acquires by eminent domain, or
5 by negotiated sale in lieu of eminent domain, all, or any portion, of
6 the real property described in this mortgage instrument, Mortgagee
7 may require Mortgagor to apply all proceeds received by Mortgagor
8 from such acquisition (remaining after payment by Mortgagor of
9 attorney's fees, appraiser's fees, and related necessary and reasonable
10 costs in connection with securing said proceeds), which proceeds
11 are hereinafter called "net proceeds", toward the payment of the sums
12 secured by this mortgage instrument. Upon receipt of said net proceeds,
13 Mortgagor shall notify Mortgagee of the amount of said net proceeds
14 and Mortgagee shall, within ten (10) days after such notification,
15 notify Mortgagor in writing if Mortgagee elects to have said net
16 proceeds applied toward payment of the sums secured by this mortgage
17 instrument. If Mortgagee fails to so notify Mortgagor of such
18 election, Mortgagee shall conclusively be deemed to have elected not
19 to require Mortgagor to apply said net proceeds toward the sums secured
20 by this mortgage instrument. If Mortgagee elects to have said net
21 proceeds applied toward payment toward the sums secured by this
22 mortgage instrument, the amount to be received by Mortgagee shall not
23 exceed the total of the principal plus accrued interest to the date of
24 receipt thereof by Mortgagee. Regardless of whether Mortgagee elects
25 to have said net proceeds applied to the sums secured by this mortgage
26 instrument, Mortgagee shall release from the lien of this mortgage
27 instrument so much of the real property above described acquired by
28 such governmental agency or entity by eminent domain, but Mortgagee
29 shall not be required to partially release more property than that
30 which is acquired by such governmental agency or entity. Mortgagee
31 shall not be obligated to participate in any negotiations with such
32 governmental agency or entity.

1 8. Sale by Mortgagor of Mortgaged Real Property: If Mortgagor
2 shall transfer or sell the real property described herein, Mortgagee
3 may elect to permit the transferee to assume the obligations secured
4 by this mortgage instrument, or to demand payment from Mortgagor, or
5 the transferee of Mortgagor, or both (at the option of the Mortgagee)
6 or such portion of the sums secured by this mortgage instrument as
7 Mortgagee may consider satisfactory, or to declare the entire balance
8 of the sums secured by this mortgage instrument immediately due and
9 payable. This provision shall not apply to any transfer by Mortgagor
10 by way of gift, devise, or bequest, or transfer between each Mortgagor,
11 or by transfer by Mortgagor to any partnership or corporation wherein
12 any Mortgagor shall own more than twenty-five (25%) per cent thereof.
13 This provision cannot be waived, unless Mortgagor gives Mortgagee written
14 notice of such transfer or sale and Mortgagee, after receipt of such
15 written notice, accepts a payment from the transferee of Mortgagor.

16 9. Expenses Incurred by Mortgagee to Protect Security: If
17 Mortgagor fails to pay or discharge any taxes, assessments, liens,
18 encumbrances, or charges to be paid by Mortgagor as provided in this
19 mortgage instrument, Mortgagee, at his option and without waiver of
20 default or breach of Mortgagor, and without being obligated to do so,
21 may pay or discharge all or any part thereof. Mortgagee may appear
22 in or defend any action or proceeding at law, in equity, or in
23 bankruptcy, affecting in any way the security hereof, and, in such
24 event, Mortgagee shall be allowed and paid, and Mortgagor hereby
25 agrees to pay all costs, charges and expenses, including costs of
26 evidence of title or validity and priority of the security created by
27 this mortgage instrument and reasonable attorney's fees to be awarded
28 by the court, at trial or on appeal, incurred by Mortgagee in any such
29 action or proceeding in which Mortgagee may appear. All sums so paid
30 or advanced or incurred by Mortgagee shall become repayable by
31 Mortgagor, together with interest at the rate of ten (10%) per cent
32 per annum, upon demand.

1 10. Time is Material and Of the Essence: Time is material and
2 of the essence hereof; in the event of default of the payment of the
3 indebtedness evidence by the note referred to in this mortgage
4 instrument, or any installment of the principal sum or interest thereon,
5 or any part thereof, or in the repayment of any disbursement authorized
6 by the terms of this mortgage and actually made by Mortgagee, or in the
7 repayment of any expense or obligation payable by the Mortgagor but
8 paid by the Mortgagee, as provided in this mortgage instrument, or in
9 the event of the failure of Mortgagor to perform any terms, covenants,
10 conditions or agreements of any mortgage or encumbrance prior to the
11 lien created by this mortgage instrument, or in the event of the breach
12 of any of the covenants or agreements by Mortgagor, Mortgagee may at once
13 proceed to foreclose this mortgage for the amount due, or in the case
14 of default as aforesaid, or in the event of the violation, non-
15 performance or breach of any of the covenants, conditions, agreements,
16 or warranties herein or in the promissory note secured by this mortgage,
17 or in case of the actual or threatened demolition or removal of any
18 building, structure, improvement, permanent planting, tree or orchards
19 on or to be erected on the mortgaged property by Mortgagor without the
20 written permission of Mortgagee, the entire principal sum of said note
21 hereby secured and the whole amount of all indebtedness owing by or
22 chargeable to Mortgagor under the provisions of this mortgage or
23 intended to be secured hereby shall, at the election of Mortgagee,
24 become immediately due and payable without notice although the time
25 expressed in said note for the payment thereof shall not have arrived
26 and suit may immediately be brought without notice to Mortgagor, and
27 a decree be had to sell the mortgaged property, or any part or parts
28 thereof, either together or in parcels, with all and every of the
29 appurtenances, or any part thereof, in the manner prescribed by law,
30 and out of the monies arising from said sale to repay said indebtedness,
31 including both principal and interest, together with the costs and
32 charges of making such sale and suit for foreclosure and also the

1 amounts of all sums advanced or paid by Mortgagee to or for the account
2 of Mortgagor, with interest thereon as herein provided, including such
3 payments of liens, taxes, or other encumbrances as may have been made
4 by Mortgagee by reason of provisions herein given, and inclusive of
5 interest thereon, and the overplus, if any there be, shall be paid by the
6 parties making such sale, on demand, to Mortgagor.

7 11. Receivorship: In the event any suit is commenced to foreclose
8 this mortgage instrument, the court having jurisdiction of the case
9 may, upon motion by Mortgagee, appoint a receiver to collect the rents
10 and profits arising out of the above described real property and to
11 take possession, management and control of the same during pendency
12 of such foreclosure proceeding or until such time as payment of the
13 obligations hereby secured is made, and apply said rents and profits
14 to the payment of the amounts due hereunder, after first deducting all
15 proper charges and expenses attending the execution of said receivership.

16 12. Costs of Title in the Event of Foreclosure: Upon the
17 commencement of any suit to collect the indebtedness or disbursements,
18 secured hereby, or any part hereof, or to enforce any provisions of
19 this mortgage instrument, by foreclosure or otherwise, there shall become
20 due, and Mortgagor agrees to pay to Mortgagee, in addition to all
21 statutory costs and disbursements, any amount Mortgagee may incur or
22 pay for any title report, title search, insurance of title, or other
23 evidence of title subsequent to the date of this mortgage instrument
24 on any of the real property above described in this mortgage instrument
25 shall be security for the payment thereof.

26 13. Attorney Fees to Prevailing Party: In the event any suit
27 or action is instituted to collect the indebtedness or disbursements
28 secured hereby, or any part thereof, or to enforce any provision of
29 this mortgage instrument by foreclosure, or otherwise, the prevailing
30 party, at trial or on appeal, shall be entitled to such reasonable
31 attorney's fees as shall be fixed by the court having jurisdiction of
32 the case, in addition to the statutory costs and disbursements.

1 14. Waiver: No waiver by Mortgagee of any breach of any covenant
2 or agreement of this mortgage instrument by Mortgagor shall be
3 construed as a continuing waiver of any subsequent breach of such
4 covenant nor as a waiver of any breach of any other covenant nor as a
5 waiver of the covenant itself nor as a waiver of this provision.

6 15. Binding Effect of Mortgage Instrument: This mortgage
7 instrument contains a full understanding of the Mortgagor and the
8 Mortgagee with respect to the provisions set forth herein and no
9 modification of this mortgage instrument shall be given effect unless
10 the same is in writing, subscribed by the Mortgagor and the Mortgagee
11 (or their successors in interest) and made of record in the same
12 manner as this mortgage instrument is made of record.

13 16. Notices: Any notice or notices required to be given by
14 either Mortgagor to Mortgagee or Mortgagee to Mortgagor pursuant to
15 any provision of this mortgage instrument shall be in writing, and
16 shall be deemed given when the same is deposited in the United States
17 mail as registered mail, postage prepaid, addressed to the party to
18 whom notice is to be given at the last address of such party known
19 by the party giving such notice. In lieu of mailing such notice, such
20 notice may be delivered in person to the party to whom notice is to
21 be given and execution by the person to whom notice is to be given of
22 a receipt of such notice shall be conclusive evidence of delivery of
23 such notice.

24 17. Binding Effect and Construction of Mortgage Instrument:
25 This mortgage instrument shall bind and inure to the benefit of, as
26 the circumstances may require, the parties hereto, and their respective
27 heirs, executors, administrators, successors and assigns. In con-
28 struing this mortgage instrument, the singular shall include both the
29 singular and the plural and the masculine both the masculine, the
30 feminine and the neuter.

31 The headings contained in this mortgage instrument are for convenience
32 only and are not to be construed as part of this mortgage instrument.

To the extent that any exhibit is attached to this mortgage instrument,
the same is hereby incorporated into this mortgage instrument as though
fully set forth at the place in this mortgage instrument at which
reference to said exhibit is made.

WITNESS the hands and seals of the Mortgagor herein the day and
year first above written.

Melvin D. Fiegi (SEAL)
Melvin D. Fiegi

Virginia Fiegi (SEAL)
Virginia Fiegi

STATE OF OREGON)
COUNTY OF KLAMATH) ss.

March 29, 1972

Personally appeared the above named MELVIN D. FIEGI and VIRGINIA
FIEGI and acknowledged the foregoing instrument to be their voluntary
act and deed.

Before me:

Alameda E. Giacomini
Notary Public for Oregon

My Commission expires: Aug. 5, 1974

The following described real property in Klamath County, Oregon:

Township 40 South, Range 11 East of the Willamette Meridian:

Section 3: Government Lots 1, 8 and 9

Section 2: Government Lots 4, 5, 12 and 13 EXCEPTING THEREFROM that portion described in Deed M-72 at page 7365 recorded July 7, 1972 and also EXCEPTING

The following described real property situate in Section 2, Township 40 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at a point on the North line of Section 2, said point being West 524.4 feet from the Northeast corner of Government Lot 3; thence West along said North line of Section 2, a distance of 1832 feet; thence South 407 feet; thence West 50 feet; thence South 618 feet; thence East 537 feet; thence Southeasterly a distance of 1008 feet, more or less to an iron pin; said iron pin being North 1° 40' West a distance of 824.2 feet from the Southwest corner of that certain parcel of real property described in deed Volume M-72 at page 7365; thence North 48° 21' East a distance of 494 feet to an iron pin; thence North 28° 13' East a distance of 807.7 feet to an iron pin; thence North 71° 24' East a distance of 278 feet to an iron pin; thence North 67° 40' East a distance of 169.3 feet; thence North 0° 39' West a distance of 508 feet, more or less to an iron pin on the North side of an irrigation ditch; thence in a Southwesterly direction parallel to the irrigation ditch a distance of 187.3 feet to an iron pin which lies 20 feet Northerly at right angles from the flume; thence Westerly parallel to and 20 feet Northerly at right angles from the flume a distance of 227 feet to the center of the drain; thence Northeasterly along the centerline of the drain a distance of 277.8 feet to the point of beginning.

SUBJECT TO: Mortgage, including the terms and provisions thereof, dated December 19, 1968, recorded December 23, 1968, in Book M-68 at page 21059, Microfilm Records, given to secure the payment of \$68,000.00, with interest thereon and such future advances as may be provided therein, executed by Melvin D. Fiegi and Virginia Fiegi, husband and wife, to The Prudential Insurance Company of America, a corporation of the State of New Jersey; and easements and rights of way of record and apparent thereon.

STATE OF OREGON, }
County of Klamath } ss.

Filed for record at request of:

TRANSAMERICA TITLE INS. CO
on this 30th day of March A. D., 1973
at 12:24 o'clock P. M. and duly
recorded in Vol. M. 73 of MORTGAGES
Page 3703

WM. D. MILNE, County Clerk

By *Hazel Drangel* Deputy.

Fee \$20.00

EXH