

A-23085

1 THIS MORTGAGE, Made this 9th day of June, 1973, by MARIE R.
2 SCHILDMAYER and NELL MARIE HINSHAW, Trustees for the SCHILDMAYER
3 FAMILY TRUST, hereinafter called "Mortgagor", to JOHN C. HORTON,
4 ROBERT L. HORTON, JOAN B. HARDMAN, JOAN B. HARDMAN and JOHN C.
5 HORTON, trustees, ROBERT L. HORTON and JOHN C. HORTON, trustees,
6 LAWRENCE J. HORTON and ANNE S. HORTON, LAWRENCE J. HORTON, hereinafter
7 called "Mortgagee";

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

9 That Mortgagor, for valuable consideration, receipt of which
10 is hereby acknowledged, does hereby grant, bargain, sell, convey,
11 mortgage, and confirm unto Mortgagee, his heirs, executors, adminis-
12 trators, successors and assigns, the following described real pro-
13 perty situate in the County of Klamath, State of Oregon, described
14 in Exhibit "A" attached hereto and thereby made a part hereof as
15 though fully set forth hereat.

16 TOGETHER WITH:

- 17 1. The tenements, hereditaments, and appurtenances now or here-
18 after used or usable in connection with the above described
19 real property;
20 2. All leases, permits, licenses, privileges, rights-of-way,
21 and easements, written or otherwise, now held by Mortgagor,
22 or hereafter issued, extended or renewed;
23 3. All improvements now on or hereafter placed upon said
24 real property during the term of this mortgage, including
25 all fixtures, now or hereafter a part of, or used in connec-
26 tion with, said improvements.
27 4. All rights to the use of water for irrigation of said
28 real property and for domestic use thereon to which said
29 real property is now or may hereafter become entitled, or
30 which may hereafter be used on said real property, however
31 the same may be evidenced, together with all shares of stock
32 or shares of water, if any, in any ditch or irrigation company

which in any manner entitles the legal or equitable owner of said real property to water for irrigation or domestic purposes upon said real property.

This mortgage is given to secure the following:

- a. Performance by Mortgagor of the covenants and agreements of Mortgagor contained in this mortgage instrument;
- b. The payment of that certain promissory note of even date in the principal sum of \$197,780.53 with interest as provided in said note, payable to the order of Mortgagee; and
- c. Payment of any sum or sums advanced, incurred, or paid by Mortgagee, to, for, or on account of Mortgagor as provided in this mortgage instrument.

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

MORTGAGOR COVENANTS AND AGREES:

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

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

3. Prompt Performance and Payment: To perform all obligations and pay all sums of money (both principal and interest at the rates

Mortgage
Page -2-

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1 specified in the note or in this mortgage instrument) secured hereby
2 promptly when due.

3 4. Protection of Security: To keep the mortgaged property,
4 including, but not limited to, buildings, structures, fixtures,
5 permanent plantings, trees, and orchards if any be in existence
6 on the date hereof, in good condition and repair, not to remove
7 or demolish nor permit the removal or demolition of any thereof;
8 to comply with all laws, rules and regulations made by any duly
9 constituted authority applicable to the mortgaged property; to
10 keep the mortgaged property free from liens of every kind; not
11 to commit nor permit any waste to or on the mortgaged property;
12 and not permit nor to commit anything which shall impair the
13 security created by this mortgage instrument.

14 5. Payment of Taxes and Assessments: To pay regularly and
15 seasonably, and before the same shall become delinquent, all taxes,
16 assessments, and charges of whatever nature (including additional
17 charges by reason of change of use) levied and assessed against
18 the mortgaged property, or any part thereof.

19 6. Fire Insurance: To keep buildings and improvements now
20 on or hereafter placed upon the above described real property insured
21 against loss by fire or other casualty in an amount not less than
22 maximum insurable value as determined by the insurance carrier
23 and shall obtain, at his own expense, an insurance endorsement
24 thereon providing for loss payable to Mortgagee and Mortgagor
25 as their respective interests may appear. The policy or policies of
26 insurance shall be delivered to Mortgagee, or in lieu thereof, a
27 certificate of such insurance may be provided by Mortgagor and
28 delivered to Mortgagee. If a loss should occur for which insurance
29 proceeds shall become payable, the Mortgagor may elect to either
30 rebuild or repair the portion of the building or improvements so
31 destroyed, or apply the proceeds to payment of the unpaid balance
32 of principal and interest secured by this mortgage instrument. If

1 the Mortgagor elects to rebuild, he shall sign such document as may
2 be required by Mortgagee to guarantee the application of the insurance
3 proceeds to the cost of such building or repair. If the Mortgagor
4 elects to apply the insurance proceeds toward payment of the obliga-
5 tion secured by this mortgage instrument, any such sums so received by
6 Mortgagee shall not be in lieu of, nor credited to, the next regular
7 installment, but shall be applied by Mortgagee first to interest
8 accrued to the date of such payment and then toward the reduction of
9 principal.

10 7. Condemnation: In the event any governmental agency or entity
11 having the power of eminent domain acquires by eminent domain, or by
12 negotiated sale in lieu of eminent domain, all, or any portion, of
13 the real property described in this mortgage instrument, Mortgagee
14 may require Mortgagor to apply all proceeds received by Mortgagor
15 from such acquisition (remaining after payment by Mortgagor of
16 attorney's fees, appraiser's fees, and related necessary and reason-
17 able costs in connection with securing said proceeds), which proceeds
18 are hereinafter called "net proceeds", toward the payment of the sums
19 secured by this mortgage instrument. Upon receipt of said net pro-
20 ceeds, Mortgagor shall notify Mortgagee of the amount of said net
21 proceeds and Mortgagee shall, within ten (10) days after such notifi-
22 cation, notify Mortgagor in writing if Mortgagee elects to have said
23 net proceeds applied toward payment of the sums secured by this mort-
24 gage instrument. If Mortgagee fails to so notify Mortgagor of such
25 election, Mortgagee shall conclusively be deemed to have elected not
26 to require Mortgagor to apply said net proceeds toward the sums secured
27 by this mortgage instrument. If Mortgagee elects to have said net
28 proceeds applied toward payment toward the sums secured by this mortgage
29 instrument, the amount to be received by Mortgagee shall not exceed
30 the total of the principal plus accrued interest to the date of
31 receipt thereof by Mortgagee. Regardless of whether Mortgagee
32 elects to have said net proceeds applied to the sums secured by this

1 mortgage instrument, Mortgagee shall release from the lien of this
2 mortgage instrument so much of the real property above described
3 acquired by such governmental agency or entity by eminent domain,
4 but Mortgagee shall not be required to partially release more pro-
5 perty than that which is acquired by such governmental agency or
6 entity. Mortgagee shall not be obligated to participate in any
7 negotiations with such governmental agency or entity.

8 8. Sale by Mortgagor of Mortgaged Real Property: If Mortgagor
9 shall transfer or sell the real property described herein. Mortgagee
10 may elect to permit the transferee to assume the obligations secured
11 by this mortgage instrument, or to demand payment from Mortgagor, or
12 the transferee of Mortgagor, or both (at the option of the Mortgagee)
13 or such portion of the sums secured by this mortgage instrument as
14 Mortgagee may consider satisfactory, or to declare the entire
15 balance of the sums secured by this mortgage instrument immediately
16 due and payable. This provision shall not apply to any transfer by
17 Mortgagor by way of gift, devise, or bequest, or transfer between
18 each Mortgagor, or by transfer by Mortgagor to any partnership or
19 corporation wherein any Mortgagor shall own more than twenty-five
20 (25%) percent thereof. This provision cannot be waived, unless
21 Mortgagor gives Mortgagee written notice of such transfer or sale
22 and Mortgagee, after receipt of such written notice, accepts a
23 payment from the transferee of Mortgagor.

24 9. Expenses Incurred by Mortgagee to Protect Security: If
25 Mortgagor fails to pay or discharge any taxes, assessments, liens,
26 encumbrances, or charges to be paid by Mortgagor as provided in
27 this mortgage instrument, Mortgagee, at his option and without waiver
28 of default or breach of Mortgagor, and without being obligated to do
29 so, may pay or discharge all or any part thereof. Mortgagee may
30 appear in or defend any action or proceeding at law, in equity, or
31 in bankruptcy, affecting in any way the security hereof, and, in
32 such event, Mortgagee shall be allowed and paid, and Mortgagor

1 hereby agrees to pay, all costs, charges and expenses, including costs
2 of evidence of title or validity and priority of the security created
3 by this mortgage instrument and reasonable attorney's fees to be
4 awarded by the court, at trial or on appeal, incurred by Mortgagee
5 in any such action or proceeding in which Mortgagee may appear. All
6 sums so paid or advanced or incurred by Mortgagee shall become repay-
7 able by Mortgagor, together with interest at the rate of
8 (%) percent per annum, upon demand.

9 10. Time Is Material and Of the Essence: Time is material and
10 of the essence hereof; in the event of default of the payment of
11 the indebtedness evidenced by the note referred to in this mortgage
12 instrument, or any installment of the principal sum or interest
13 thereon, or any part thereof, or in the repayment of any disburse-
14 ment authorized by the terms of this mortgage and actually made by Mort-
15 gagee, or in the repayment of any expense or obligation payable by
16 the Mortgagor but paid by the Mortgagee, as provided in this mortgage
17 instrument, or in the event of the breach of any of the covenants
18 or agreements by Mortgagor, Mortgagee may at once proceed to fore-
19 close this mortgage for the amount due, or in the case of default
20 as aforesaid, or in the event of the violation, non-performance or
21 breach of any of the covenants, conditions, agreements, or warranties
22 herein or in the promissory note secured by this mortgage, or in
23 case of the actual or threatened demolition or removal of any
24 building, structure, improvement, permanent planting, tree or
25 orchards on or to be erected on the mortgaged property by Mortgagor
26 without the written permission of Mortgagee, the entire principal
27 sum of said note hereby secured and the whole amount of all indebted-
28 ness owing by or chargeable to Mortgagor under the provisions of
29 this mortgage or intended to be secured hereby shall, at the election
30 of Mortgagee, become immediately due and payable without notice
31 although the time expressed in said note for the payment thereof
32 shall not have arrived and suit may immediately be brought without

1 notice to Mortgagor, and a decree be had to sell the mortgaged pro-
2 perty, or any part or parts thereof, either together or in parcels, with
3 all and every of the appurtenances, or any part thereof, in the manner
4 prescribed by law, and out of the monies arising from said sale to re-
5 pay said indebtedness, including both principal and interest, together
6 with the costs and charges of making such sale and suit for fore-
7 closure and also the amounts of all sums advanced or paid by Mort-
8 gagee to or for the account of Mortgagor, with interest thereon as
9 herein provided, including such payments of liens, taxes, or other
10 encumbrances as may have been made by Mortgagee by reason of provi-
11 sions herein given, and inclusive of interest thereon, and the
12 overplus, if any there be, shall be paid by the party making such
13 sale, on demand, to Mortgagor.

14 11. Receivorship: In the event any suit is commenced to fore-
15 close this mortgage instrument, the court having jurisdiction of the
16 case may, upon motion by Mortgagee, appoint a receiver to collect
17 the rents and profits arising out of the above described real pro-
18 perty and to take possession, management and control of the same
19 during pendency of such foreclosure proceeding or until such time
20 as payment of the obligations hereby secured is made, and apply
21 said rents and profits to the payment of the amounts due hereunder,
22 after first deducting all proper charges and expenses attending the
23 execution of said receivership.

24 12. Costs of Title in the Event of Foreclosure: Upon the
25 commencement of any suit to collect the indebtedness or disburse-
26 ments, secured hereby, or any part hereof, or to enforce any pro-
27 visions of this mortgage instrument, by foreclosure or otherwise,
28 there shall become due, and Mortgagor agrees to pay to Mortgagee,
29 in addition to all statutory costs and disbursements, any amount
30 Mortgagee may incur or pay for any title report, title search,
31 insurance of title, or other evidence of title subsequent to the
32 date of this mortgage instrument on any of the real property above

1 described in this mortgage instrument shall be security for the pay-
2 ment thereof.

3 13. Attorney Fees to Prevailing Party: In the event any suit
4 or action is instituted to collect the indebtedness or disbursements
5 secured hereby, or any part thereof, or to enforce any provision of
6 this mortgage instrument by foreclosure, or otherwise, the pre-
7 vailing party, at trial or on appeal, shall be entitled to such
8 reasonable attorney's fees as shall be fixed by the court having
9 jurisdiction of the case, in addition to the statutory costs and
10 disbursements.

11 14. Waiver: No waiver by Mortgagee of any breach of any
12 covenant or agreement of this mortgage instrument by Mortgagor shall
13 be construed as a continuing waiver of any subsequent breach of
14 such covenant nor as a waiver of any breach of any other covenant
15 nor as a waiver of the covenant itself nor as a waiver of this
16 provision.

17 15. Binding Effect of Mortgage Instrument: This mortgage
18 instrument contains a full understanding of the Mortgagor and the
19 Mortgagee with respect to the provisions set forth herein and no
20 modification of this mortgage instrument shall be given effect
21 unless the same is in writing, subscribed by the Mortgagor and the
22 Mortgagee (or their successors in interest) and made of record in
23 the same manner as this mortgage instrument is made of record.

24 16. Notices: Any notice or notices required to be given by
25 either Mortgagor to Mortgagee or Mortgagee to Mortgagor pursuant
26 to any provision of this mortgage instrument shall be in writing,
27 and shall be deemed given when the same is deposited in the United
28 States mail as registered mail, postage prepaid, addressed to the
29 party to whom notice is to be given at the last address of such
30 party known by the party giving such notice. In lieu of mailing
31 such notice, such notice may be delivered in person to the party
32 to whom notice is to be given and execution by the person to whom

1 notice is to be given of a receipt of such notice shall be conclusive
2 evidence of delivery of such notice.

3 17. Binding Effect and Construction of Mortgage Instrument:

4 This mortgage instrument shall bind and inure to the benefit of, as
5 the circumstances may require, the parties hereto, and their res-
6 pective heirs, executors, administrators, successors and assigns.
7 In contruing this mortgage instrument, the singular shall include
8 both the singular and the plural and the masculine both the masculine,
9 the feminine and the neuter.

10 The headings contained in this mortgage instrument are for con-
11 venience only and are not to be construed as part of this mortgage
12 instrument. To the extent that any exhibit is attached to this
13 mortgage instrument, the same is hereby incorporated into this
14 mortgage instrument as though fully set forth at the place in this
15 mortgage instrument at which reference to said exhibit is made.

16 WITNESS the hands of the Mortgagor this 9th day of June,
17 1973.

SCHILDMEYER FAMILY TRUST

18 By Marie R. Schildmeyer
19 Marie R. Schildmeyer, Trustee

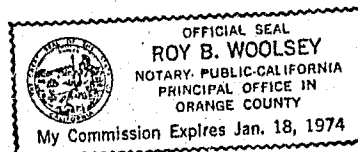
20 By Nell Marie Hinshaw
21 Nell Marie Hinshaw, Trustee

22 STATE OF CALIFORNIA)
23 County of Orange) ss.

24 On the 9th day of June, 1973, personally appeared the above
25 named Marie R. Schildmeyer and Nell Marie Hinshaw, trustees for the above
26 named Trust, and acknowledged the foregoing instrument to be their
27 voluntary act and deed.

Before me:

28 (SEAL)



29 Notary Public for California
30 My commission expires: _____
31
32

EXHIBIT "A"
DESCRIPTION OF PROPERTY

7694

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

Township 38 South, Range 11½ East of the Willamette Meridian:

PARCEL 1

Section 34: E½ of the SW¼

PARCEL 2

Section 34: Beginning at the SE corner of the SE¼ of the NW¼ of said Section 34; thence West along the Southerly line of said SE¼ of the NW¼ of said Section 34 a distance of 1320 feet, more or less, to the SW corner of said 40 acre tract; thence Northerly along the Westerly line of said 40 acre tract 668 feet, more or less, to the Southerly line of the property heretofor conveyed to A. L. Michael by deed recorded in Volume 66 page 552, Klamath County records; thence South-easterly along the southerly line of said Michael property to the Westerly line of the property heretofor conveyed to H. L. Arant by deed recorded in Volume 33 page 78, Klamath County deed records; thence Southerly along the Westerly line of said Arant property a distance of 570 feet, more or less, to the SW corner thereof; thence Easterly along the Southerly line of said Arant property 960 feet, more or less, to the Easterly line of the SE¼ of the NW¼ of said Section 34; thence South along the Easterly line of said SE¼ of the NW¼ to the place of beginning.

PARCEL 3

Section 34: Beginning at the SE corner of the SW¼ of the SW¼ of said Section 34; thence North along the East line of the W¼ of the SW¼ of said Section 34 a distance of 2640 feet, more or less, to the SE corner of the SW¼ of the NW¼ of Section 34; thence continuing North along the East line of the SW¼ of the NW¼ of Section 34 a distance of 630 feet, more or less, to the center line of a dry gulch or wash, so described in deed recorded in Klamath County Deed records in Volume 182 page 255; thence North 75° West along said dry gulch 53 feet, more or less, to a fence line; thence South 0° 54' East along said fence line 3280 feet, more or less to the point of beginning.

PARCEL 4

Section 35: S½ of the SW¼

Township 39 South, Range 11½ East of the Willamette Meridian:

PARCEL 5

Section 2: Lot 1 and the SE¼ of the NE¼

PARCEL 6

Section 2: Lots 2, 3, 4, the SW¼ of the NE¼, the S½ of the NW¼, and the S½

PARCEL 7

Section 3: S½, S½ of the N½, and the S½ of Lots 1 and 2

EXHIBIT "A"

7695

PARCEL 8

Section 4: S $\frac{1}{2}$ of the SE $\frac{1}{4}$

PARCEL 9

Section 9: N $\frac{1}{2}$ of the NE $\frac{1}{4}$

PARCEL 10

Section 9: SE $\frac{1}{4}$

PARCEL 11

Section 10: NW $\frac{1}{4}$ of the NW $\frac{1}{4}$

PARCEL 12

Section 10: E $\frac{1}{2}$, the E $\frac{1}{2}$ of the NW $\frac{1}{4}$, and the SW $\frac{1}{4}$

PARCEL 13

Section 11: N $\frac{1}{2}$, the SW $\frac{1}{4}$, the W $\frac{1}{2}$ of the SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$

PARCEL 14

Section 12: NW $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SW $\frac{1}{4}$

PARCEL 15

Section 14: N $\frac{1}{2}$ of the NE $\frac{1}{4}$, the NW $\frac{1}{4}$, and the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$

PARCEL 16

Section 15: NE $\frac{1}{4}$ of the NE $\frac{1}{4}$

STATE OF OREGON, }
County of Klamath } ss.

Filed for record at request of:
KLAMATH COUNTY TITLE CO

on this 12th day of June A. D., 1973
at 2:22 o'clock P. M. and duly
recorded in Vol. M 73 of MORTGAGES
Page 7685

WM. D. MILNE, County Clerk

Fee \$ 22.00 By *Hazel Drayton* Deputy.

Ref. Klam Co. Title