

A-23085

1 THIS MORTGAGE, Made this 15th day of June, 1973, by WILLIAM  
2 H. BARNWELL, III, and MARY P. BARNWELL, husband and wife, herein-  
3 after called "Mortgagor", to MARIE R. SCHILDMAYER and NELL MARIE  
4 HINSHAW, Trustees for the SCHILDMAYER FAMILY TRUST, hereinafter  
5 called "Mortgagee;

W I T N E S S E T H:

6 That Mortgagor, for valuable consideration, receipt of which  
7 is hereby acknowledged, does hereby grant, bargain, sell, convey,  
8 mortgage, and confirm unto Mortgagee, his heirs, executors, adminis-  
9 trators, successors, and assigns, the following described real pro-  
10 perty situate in the County of Klamath, State of Oregon, described in  
11 Exhibit "A" and Leasehold interests described in Exhibit "B" attached  
12 hereto and thereby made a part hereof as though fully set forth hereat,  
13 including Bureau of Land Management Lease No. 0-1-12, effective March 6,  
14 1971, and State of Oregon, Division of State Lands, lease No. TL-556-S.

## TOGETHER WITH:

- 15  
16  
17 1. The tenements, hereditaments, and appurtenances now or  
18 hereafter 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 and 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

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

4 This mortgage is given to secure the following:

- 5 a. Performance by Mortgagor of the covenants and agreements  
6 of Mortgagor contained in this mortgage instrument;  
7 b. The payment of that certain promissory note of even date  
8 in the principal sum of \$422,450.00 with interest as pro-  
9 vided in said note, payable to the order of Mortgagee; and  
10 c. Payment of any sum or sums advanced, incurred, or paid  
11 by Mortgagee, to, for, or on account of Mortgagor as pro-  
12 vided in this mortgage instrument.

13 To have and to hold the said mortgaged property to the said Mort-  
14 gagee, his heirs, executors, administrators, successors and assigns  
15 until the obligations secured by this mortgage instrument have been  
16 fully discharged.

17  
18 MORTGAGOR COVENANTS AND AGREES:

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

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

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



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

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

13 Security, and

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.

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

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

7. Condemnation: In the event any governmental agency or entity having the power of eminent domain acquires by eminent domain, or by negotiated sale in lieu of eminent domain, all, or any portion, of the real property described in this mortgage instrument, Mortgagee may require Mortgagor to apply all proceeds received by Mortgagor from such acquisition (remaining after payment by Mortgagor of attorney's fees, appraiser's fees, and related necessary and reasonable costs in connection with securing said proceeds), which proceeds are hereinafter called "net proceeds", toward the payment of the sums secured by this mortgage instrument. Upon receipt of said net proceeds, Mortgagor shall notify Mortgagee of the amount of said net proceeds and Mortgagee shall, within ten (10) days after such notification, notify Mortgagor in writing if Mortgagee elects to have said net proceeds applied toward payment of the sums secured by this mortgage instrument. If Mortgagee fails to so notify Mortgagor of such election, Mortgagee shall conclusively be deemed to have elected not to require Mortgagor to apply said net proceeds toward the sums secured by this mortgage instrument. If Mortgagee elects to have said net proceeds applied toward payment toward the sums secured by this mortgage instrument, the amount to be received by Mortgagee shall not exceed the total of the principal plus accrued interest to the date of receipt thereof by Mortgagee. In the event any of said net proceeds includes severance damages, and Mortgagor



1 elects to use said severance damages to acquire other property,  
2 the amount of said severance damages used by Mortgagor to acquire  
3 other property shall not be paid over to Mortgagee, in the event  
4 Mortgagee should elect to have net proceeds applied toward payment  
5 of the sums secured by this mortgage instrument, but in lieu of  
6 said application, Mortgagor shall give Mortgagee a mortgage on the  
7 property acquired with said severance damages equal in standing to  
8 the security of this mortgage. Regardless of whether Mortgagee  
9 elects to have said net proceeds applied to the sums secured by  
10 this \_\_\_\_\_

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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

Mortgage

Page -5-

21 here  
 22 case of  
 23 building,  
 24 orchards  
 25 witho  
 26 su  
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 28



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 construing 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 Mortgagor, the day and year first above  
17 written.

18 William H. Barnwell III  
19 William H. Barnwell III

20 Mary P. Barnwell  
21 Mary P. Barnwell

22 STATE OF OREGON )  
23 ) ss.  
24 County of Klamath )

25 On the 15th day of June, 1973, personally appeared the above  
26 named William H. Barnwell, III, and Mary P. Barnwell and acknowledged  
27 the foregoing instrument to be their voluntary act and deed.

28 (SEAL) Before me:

29 Shirley J. Rogers  
30 Notary Public for Oregon  
31 My commission expires: 8-5-75  
32



EXHIBIT "A"  
DESCRIPTION OF PROPERTY

7709

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"

7710

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  $NE\frac{1}{4}$



7711

Exhibit "B"  
Leasehold Interests

1. Grazing lease effective March 16, 1971, wherein United States Department of Interior, Bureau of Land Management, is lessor and Schildmeyer Family Trust is lessee, covering 1707.6 acres in Township 39 South, Range 11½ East, Willamette Meridian, Klamath County, Oregon.
2. Cooperative Agreements relative to Horton Reservoir, Horton Waterhole No. 2, and Horton Section 15 fence, between Schildmeyer Family Trust and United States Department of Interior, Bureau of Land Management.
3. State of Oregon Lease No. TL556S, covering grazing land situate in Klamath County, Oregon, to-wit:  
Township 39 South, Range 11½ East, Section 16  
N½N½, SW¼NW¼, NW¼SW¼  
Containing 240 acres, more or less.

STATE OF OREGON, }  
County of Klamath } ss.

Filed for record at request of:  
KLAMATH COUNTY TITLE CO  
on this 19th day of June A. D., 1973  
at 2:23 o'clock P. M. and duly  
recorded in Vol. M 73 of MORTGAGES  
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WM. D. MILNE, County Clerk

Fee \$ 26.00 By *Kazul Inagul* Deputy.

Leasehold Interests

Exhibit "B"