

96275

THIS MORTGAGE, Made this 31st day of December,
1974, and effective as of November 25, 1974, by
ROBERT E. BARTELL, JR., sometimes known as ROBERT E. BARTELL, and
DARLA BARTELL, husband and wife

hereinafter called "Mortgagor", to
R. E. BARTELL, also known as ROBERT E. BARTELL, SR.
and HATTIE I. BARTELL, husband and wife

hereinafter called "Mortgagee";

WITNESSETH:

28-8057

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

TOGETHER WITH:

1. The tenements, hereditaments, and appurtenances now or hereafter used or usable in connection with the above described real property;
2. All leases, permits, licenses, privileges, rights-of-way, and easements, written or otherwise, now held by mortgagor, or hereafter issued, extended or renewed;
3. All improvements now on or hereafter placed upon said real property during the term of this mortgage, including all fixtures, now or hereafter a part of, or used in connection with, said improvements.
4. All rights to the use of water for irrigation of said real property and for domestic use thereon to which said real property is now or may hereafter become entitled, or which may hereafter be used on said real property, however the same may be evidenced, together with all shares of stock 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:

1. Performance by Mortgagor of the covenants and agreements of Mortgagor contained in this mortgage instrument;
2. The payment of that certain promissory note of even date in the principal sum of \$96,535.77, with interest as provided in said note, payable to the order of Mortgagee; and,
3. 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 real property is free from all encumbrances, except as above set forth, and that Mortgagor 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 specified in the note or in this mortgage instrument) secured hereby 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.
5. Payment of Taxes and Assessments: To pay regularly and seasonably, and before the same shall become delinquent, all taxes, assessments, and charges of whatever nature (including additional charges by reason of change of use) levied and assessed against the mortgaged property, or any part thereof.
6. Fire Insurance: To keep buildings and improvements now on, or hereafter placed upon, the above

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1 described real property insured against loss by fire or other casualty in an amount not less than maximum
2 insurable value as determined by the insurance carrier and shall obtain, at his own expense, an insurance
3 endorsement thereon providing for loss payable to Mortgagee and Mortgagor as their respective interests
4 may appear. The policy or policies of insurance shall be delivered to Mortgagee, or in lieu thereof, a
5 certificate of such insurance may be provided by Mortgagor and delivered to Mortgagee. If a loss should
6 occur for which insurance proceeds shall become payable, the Mortgagor may elect to either rebuild or
7 repair the portion of the building or improvements so destroyed, or apply the proceeds to payment of the
8 unpaid balance of principal and interest secured by this mortgage instrument. If the Mortgagor elects to
9 rebuild, he shall sign such document as may be required by Mortgagee to guarantee the application of the
10 insurance proceeds to the cost of such building or repair. If the Mortgagor elects to apply the insurance
11 proceeds toward payment of the obligation secured by this mortgage instrument, any such sums so received
12 by Mortgagee shall not be in lieu of, nor credited to, the next regular installment, but shall be applied by
13 Mortgagee first to interest accrued to the date of such payment and then toward the reduction of
14 principal.

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

35 **8. Sale by Mortgagor of Mortgaged Real Property:** If Mortgagor shall transfer or sell the real prop-
36 erty described herein, Mortgagee may elect to permit the transferee to assume the obligations secured by
37 this mortgage instrument, or to demand payment from Mortgagor, or the transferee of Mortgagor, or both
38 (at the option of the Mortgagee), or such portion of the sums secured by this mortgage instrument as
39 Mortgagee may consider satisfactory, or to declare the entire balance of the sums secured by this mortgage
40 instrument immediately due and payable. This provision shall not apply to any transfer by Mortgagor by
41 way of gift, devise, or bequest, or transfer between each Mortgagor, or by transfer by Mortgagor to any
42 partnership or corporation wherein any Mortgagor shall own more than (25 %) percent thereof. This
43 provision cannot be waived, unless Mortgagor gives Mortgagee written notice of such transfer or sale and
44 Mortgagee, after receipt of such written notice, accepts a payment from the transferee of Mortgagor.

45 **9. Expenses Incurred by Mortgagee to Protect Security:** If Mortgagor fails to pay or discharge any
46 taxes, assessments, liens, encumbrances, or charges to be paid by Mortgagor as provided in this mortgage
47 instrument, Mortgagee, at his option and without waiver of default or breach of Mortgagor, and without
48 being obligated to do so, may pay or discharge all or any part thereof. Mortgagee may appear in or
49 defend any action or proceeding at law, in equity, or in bankruptcy, affecting in any way the security
50 hereof, and, in such event, Mortgagee shall be allowed and paid, and Mortgagor hereby agrees to pay, all
51 costs, charges and expenses, including costs of evidence of title or validity and priority of the security
52 created by this mortgage instrument and reasonable attorney's fees to be awarded by the court, at trial or
53 on appeal, incurred by Mortgagee in any such action or proceeding in which Mortgagee may appear. All
54 sums so paid or advanced or incurred by Mortgagee shall become repayable by Mortgagor, together with
55 interest at the rate of (10 %) percent per annum, upon demand.

56 **10. Time Is Material and Of the Essence:** Time is material and of the essence hereof; in the event of
57 default of the payment of the indebtedness evidenced by the note referred to in this mortgage instrument,
58 or any installment of the principal sum or interest thereon, or any part thereof, or in the repayment of
59 any disbursement authorized by the terms of this mortgage and actually made by Mortgagee, or in the
60 repayment of any expense or obligation payable by the Mortgagor but paid by the Mortgagee, as provided
61 in this mortgage instrument, or in the event of the breach of any of the covenants or agreements by
62 Mortgagor, Mortgagee may at once proceed to foreclose this mortgage for the amount due, or in the case
63 of default as aforesaid, or in the event of the violation, non-performance or breach of any of the cove-
64 nants, conditions, agreements, or warranties herein or in the promissory note secured by this mortgage, or
65 in case of the actual or threatened demolition or removal of any building, structure, improvement,
66 permanent planting, tree or orchards on or to be erected on the mortgaged property by Mortgagor without

1 the written permission of Mortgagee, the entire principal sum of the promissory note hereby secured and
 2 the whole amount of all indebtedness owing by or chargeable to Mortgagor under the provisions of this
 3 mortgage or intended to be secured hereby shall, at the election of Mortgagee, become immediately due and
 4 payable without notice although the time expressed in said note for the payment thereof shall not have
 5 arrived and suit may immediately be brought without notice to Mortgagor, and a decree be had to sell the
 6 mortgaged property, or any part or parts thereof, either together or in parcels, with ali and every of the
 7 appurtenances, or any part thereof, in the manner prescribed by law, and out of the monies arising from
 8 said sale to repay said indebtedness, including both principal and interest, together with the costs and
 9 charges of making such sale and suit for foreclosure and also the amounts of all sums advanced or paid
 10 by Mortgagee to or for the account of Mortgagor, with interest thereon as herein provided, including such
 11 payments of liens, taxes, or other encumbrances as may have been made by Mortgagee by reason of provi-
 12 sions herein given, and inclusive of interest thereon, and the overplus, if any there be, shall be paid by
 13 the party making such sale, on demand, to Mortgagor.

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

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

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

32 14. Waiver: No waiver by Mortgagee of any breach of any covenant or agreement of this mortgage
 33 instrument by Mortgagor shall be construed as a continuing waiver of any subsequent breach of such
 34 covenant, nor as a waiver of any breach of any other covenant, nor as a waiver of the covenant itself, nor
 35 as a waiver of this provision.

36 15. Binding Effect of Mortgage Instrument: This mortgage instrument contains a full understanding
 37 of the Mortgagor and the Mortgagee with respect to the provisions set forth herein and no modification
 38 of this mortgage instrument shall be given effect unless the same is in writing, subscribed by the
 39 Mortgagor and the Mortgagee (or their respective successor in interest) and made of record in the same
 40 manner as this mortgage instrument is made of record.

41 16. Notices: Any notice or notices required to be given by either Mortgagor to Mortgagee or Mort-
 42 gagee to Mortgagor pursuant to any provision of this mortgage instrument shall be in writing, and shall be
 43 deemed given when the same is deposited in the United States mail as registered mail, postage prepaid,
 44 addressed to the party to whom notice is to be given at the last address of such party known by the
 45 party giving such notice. In lieu of mailing such notice, such notice may be delivered in person to the
 46 party to whom notice is to be given and execution by the person to whom notice is to be given of a
 47 receipt of such notice shall be conclusive evidence of delivery of such notice.

48 17. Binding Effect and Construction of Mortgage Instrument: This mortgage instrument shall bind
 49 and inure to the benefit of, as the circumstances may require, the parties hereto, and their respective
 50 heirs, executors, administrators, successors, and assigns. In contruing this mortgage instrument, the singular
 51 shall include both the singular and the plural and the masculine the masculine, the feminine, and the
 52 neuter. The headings contained in this mortgage instrument are for convenience only and are not to be
 53 construed as part of this mortgage instrument. To the extent that any exhibit is attached to this
 54 mortgage instrument, the same is hereby incorporated into this mortgage instrument as though fully set
 55 forth at the place in this mortgage instrument at which reference to said exhibit is made.

56 WITNESS the hands of the parties the day and year first above written.
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 58
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 60
 61

62 Robert E. Bartell, Jr.
 63 Robert E. Bartell, Jr.
 64
 65
 66

Darla Bartell
 Darla Bartell

STATE OF OREGON }
 County of Klamath }

On the 31st day of December, 1974, personally appeared the
 above named Robert E. Bartell, Jr. and Darla Bartell, husband and
 wife, 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, 1978

(SEAL)

GIACOMINI, JONES & ZANSKY, ATTORNEYS AT LAW A PROFESSIONAL CORPORATION, KLAMATH FALLS, OREGON

GIACOMINI, JONES & ZAMSKY, ATTORNEYS AT LAW A PROFESSIONAL CORPORATION, KLAMATH FALLS, OREGON

PARCEL I: Mortgagor's undivided one-half interest in the following described land:

- TOWNSHIP 36 SOUTH, RANGE 11 EAST OF THE WILLAMETTE MERIDIAN:
- Parcel 1. In Section 20, E $\frac{1}{2}$, in Section 21, W $\frac{1}{2}$
- Parcel 2. In Section 21, E $\frac{1}{2}$
- Parcel 3. In Section 31, Government Lots 5 and 6, NW $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$

- TOWNSHIP 37 SOUTH, RANGE 11 EAST OF THE WILLAMETTE MERIDIAN:
- Parcel 4. In Section 5, W $\frac{1}{2}$ SW $\frac{1}{4}$
- Parcel 5. In Section 6, Government Lot 2, S $\frac{1}{2}$ of Government Lot 1, S $\frac{1}{2}$ of NE $\frac{1}{4}$
- Parcel 6. In Section 6, SE $\frac{1}{4}$
- Parcel 7. In Section 7, NE $\frac{1}{4}$
- Parcel 8. In Section 8, W $\frac{1}{2}$ NW $\frac{1}{4}$

PARCEL II: Mortgagor's equity in the following described land:

The SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14; the NE $\frac{1}{4}$ of Section 23, all in Township 40 South, Range 13 E.W.M., EXCEPTING THEREFROM that portion conveyed to the United States of America by deed recorded November 23, 1922, in Volume 59 at page 334, Deed Records of Klamath County, Oregon.

SUBJECT TO:

All encumbrances and contracts of record, including, but not limited to, that certain contract of sale of real property wherein Joseph Gerkin and Yolanda Gerkin, husband and wife, are Seller and Mortgagor is Buyer, affecting Parcel II; current taxes; and easements and rights of way of record and apparent thereon.

Return to
Giacomini, Jones & Zamsky
635 Main
City

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of TRANS-AMERICA TITLE INS. CO

this 6th day of JANUARY A. D. 19 75 at 10:50 o'clock A. M., and

duly recorded in Vol. M 75, of Mortgage on Page 141

FEE \$ 10.00

Wm D. MILNE, County Clerk

By Hazel Drazil