

20679

MTC 2325

Vol. 116 Page

16855

1 THIS MORTGAGE, Made this 1st day of October,
2 1976, by

3 E. MARTIN KERNS and SHIRLEY F. KERNS, husband and wife

4 hereinafter called "Mortgagor", to

5 E. G. KERNS RANCHES, a co-partnership consisting of ELAINE
6 G. KERNS, SYDNEY K. GIACOMINI and E. MARTIN KERNS

7 hereinafter called "Mortgagee";

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WITNESSETH:

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 \$25,000.00, 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

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 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 secured by this mortgage instrument, plus accrued interest thereon to the date of receipt thereof by Mortgagee. Regardless of whether Mortgagee elects to have said net proceeds applied to the sums secured by this mortgage instrument, Mortgagee shall release from the lien of this mortgage instrument so much of the real property above described acquired by such governmental agency or entity by eminent domain, but Mortgagee shall not be required to partially release more property than that which is acquired by such governmental agency or entity. Mortgagee shall not be obligated to participate in any negotiations with such governmental agency or entity.

8. Sale by Mortgagor of Mortgaged Real Property: If Mortgagor shall transfer or sell the real property described herein, Mortgagee may elect to permit the transferee to assume the obligations secured by this mortgage instrument, or to demand payment from Mortgagor, or the transferee of Mortgagor, or both (at the option of the Mortgagee), or such portion of the sums secured by this mortgage instrument as Mortgagee may consider satisfactory, or to declare the entire balance of the sums secured by this mortgage instrument immediately due and payable. This provision shall not apply to any transfer by Mortgagor by way of gift, devise, or bequest, or transfer between each Mortgagor, or by transfer by Mortgagor to any partnership or corporation wherein any Mortgagor shall own more than (50 %) percent thereof. This provision cannot be waived, unless Mortgagor gives Mortgagee written notice of such transfer or sale and Mortgagee, after receipt of such written notice, accepts a payment from the transferee of Mortgagor.

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

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

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

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

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

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

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

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

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

17. Binding Effect and Construction of Mortgage Instrument: This mortgage instrument shall bind and inure to the benefit of, as the circumstances may require, the parties hereto, and their respective heirs, executors, administrators, successors, and assigns. In construing this mortgage instrument, the singular shall include both the singular and the plural and the masculine the masculine, the feminine, and the neuter. The headings contained in this mortgage instrument are for convenience 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.

18. PERFORMANCE OF PRIOR MORTGAGE: This mortgage instrument is subject to a prior mortgage in favor of Federal Land Bank of Spokane recorded as set forth in Exhibit "A". It is understood and agreed that failure to perform the terms and provisions of the aforesaid mortgage in favor of Federal Land Bank of Spokane, shall constitute a breach of this mortgage.

16858

1 IN WITNESS WHEREOF, we have herewith set our hands and seals the day
2 and year first above written.

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6 E. Martin Kerns
7 E. Martin Kerns

Shirley F. Kerns
Shirley F. Kerns

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11 STATE OF OREGON)
12) ss.
13 County of Klamath)

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15 On this 1st day of October, 1976, personally appeared
16 E. MARTIN KERNS and SHIRLEY F. KERNS and acknowledged the foregoing instrument
17 to be their voluntary act and deed.

18
19
20 Before me:

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24 (SEAL)

James B. Labots
Notary Public for Oregon
My Commission expires: 8-18-77

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30 Return to:
31 Giacomini, Jones & Zamsky
32 635 Main Street
33 Klamath Falls, Ore.
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DESCRIPTION

16859

Township 40 South, Range 13 East of the Willamette Meridian, Klamath County, Oregon.

Section 25: NW $\frac{1}{4}$; W $\frac{1}{2}$ NE"; and all that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ lying Westerly of the Lost River Diversion Channel.

TOGETHER WITH:

The following perpetual easements, to run with land, for the construction, repair, maintenance and joint use of irrigation ditches for irrigation purposes:

(a) An easement 30 feet wide extending East from Langell Valley West Side Irrigation Canal along the North side of the South Section line of Sections 23 and 24 of Township 40 South, Range 13 East of the Willamette Meridian, a distance of 6400 feet, more or less, to Lost River Diversion Channel.

(b) An easement 30 feet wide extending East from Langell Valley West Side Irrigation Canal along the South line of the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 26, Township 40 South, Range 13 East of the Willamette Meridian, a distance of 1790 feet, more or less, to the West side of said Parcels 1 and 2.

(c) An easement 30 feet wide extending East from Langell Valley West Side Irrigation Canal along the north side of the East-West center line of Section 26, Township 40 South, Range 13 East of the Willamette Meridian, a distance of 1525 feet, more or less, to the Southwest corner of said Parcel 1.

EXCEPTING THEREFROM:

That portion lying within the main drain as conveyed to the United States of America by deed recorded October 23, 1927, in Volume 79, page 131, and by deed recorded January 22, 1929, in Volume 85, page 186, Deed Records of Klamath County, Oregon.

SUBJECT TO: Easements and rights of way of record and apparent thereon and mortgage in favor of Federal Land Bank of Spokane recorded in Volume M-76, page 16852, Mortgage Records of Klamath County, Oregon

STATE OF OREGON; COUNTY OF KLAMATH; ss.
 Filed for record at request of MOUNTAIN TITLE CO.
 this 22nd day of October A.D. 1976 at 12:25 o'clock P.M.
 duly recorded in Vol. M-76, of MORTGAGES on Page 16855
 Wm D. MILNE, County Clerk
 By *Hazel D. Nagel*

FEE \$ 15.00

EXHIBIT "A"