

45704

MORTGAGE (Survivorship)

VOL 2170 PAGE 3156

THIS MORTGAGE, Made this 12th day of October, 1970, by HARRY R. WAGGONER & NORMA E. WAGGONER, husband and wife and WALTER B. WAGGONER, Mortgagors, to GLEN DEHLINGER & DOROTHY DEHLINGER, husband and wife, Mortgagees,

WITNESSETH, That said mortgagors, in consideration of the sum of One Hundred Thousand and no/100 (\$100,000.00) Dollars to the mortgagors paid by the mortgagees, the said mortgagors do hereby grant, bargain, sell and convey unto the said mortgagees as joint tenants with the right of survivorship and not as tenants in common, their assigns and the heirs of the survivor of them, those certain premises situate in the County of Klamath, and State of Oregon, and described as follows, to-wit:

The following described tracts of land situated in Section 3, Township 39 South, Range 9 East of the Willamette Meridian.

PARCEL 1. The West 100 feet of the following described tract: Beginning at the intersection of the Southerly Right of Way line of the relocated Klamath Falls-Lakeview Highway and the West line of the NE $\frac{1}{4}$ of SE $\frac{1}{4}$; thence South 0°22'15" East along said West line 200 feet; thence East parallel with the South Right of Way line 142.5 feet; thence N 0°22'15" West 200 feet to the South line of said highway; thence West along said South line 142.5 feet to the point of beginning.

PARCEL 2:

The East 42.5 feet of the following described tract: Beginning at the intersection of the Southerly Right of Way line of the relocated Klamath Falls-Lakeview Highway and the West line of the NE $\frac{1}{4}$ of SE $\frac{1}{4}$; thence South 0°22'15" East along said West line 200 feet; thence East parallel with the South Right of Way line 142.5 feet; thence N 0°22'15" West 200 feet to the South line of said highway; thence West along said South line 142.5 feet to the point of beginning.

PARCEL 3:

Beginning at intersection of the Southerly Right of Way line of the relocated Klamath Falls-Lakeview Highway with the West line of the NE $\frac{1}{4}$ of SE $\frac{1}{4}$; thence South 0°22'15" East along said West line 200 feet to the true point of beginning; thence continuing South along said line 142.5 feet; thence North 0°22'15" West 260 feet; thence West parallel with the South line of said highway 142.5 feet to the point of beginning,

together with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; together with the rents, issues and profits therefrom and all fixtures and all fixtures now or hereafter placed or installed in or upon said described premises,

TO HAVE AND TO HOLD the same unto the said mortgagees as joint tenants

Page 1 - Mortgage

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60-1498
GUT 13 3 22 15 PM

2601 7th E - parallel with South Right of Way line

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1 with the right of survivorship and not as tenants in common, and to their
2 assigns and the heirs of the survivor forever.
3 This mortgage is intended to secure the payment of a certain promissory
4 note in words and figures substantially as follows:

\$100,000.00

Klamath Falls, Oregon, October 12, 1970

Two years after date, each of the undersigned promises to pay to the order of GLEN DEHLINGER & DOROTHY DEHLINGER, husband and wife, and upon the death of any of them, then to the order of the survivor of them, at Klamath Falls, Oregon, One Hundred Thousand and no/100 Dollars, with interest thereon at the rate of 9 1/2% per annum from October 11, 1970, until paid; interest to be paid monthly and if not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. If this note is placed in the hands of an attorney for collection, each of the undersigned promises and agrees to pay the reasonable collection costs of the holder hereof; and, if suit or action is filed hereon, also promises to pay (1) the holder's reasonable attorney's fees to be fixed by the trial court and (2) if any appeal is taken from any decision of the trial court, such further sum as may be fixed by the appellate court, as the holder's reasonable attorney's fees in the appellate court.

It is the intention of the parties hereto that the said payees do not take the title hereto as tenants in common but with the right of survivorship, that is: on the death of any of the payees, the right to receive payment of the then unpaid balance of principal and interest shall vest absolutely in the survivor of them.

PREPAYMENT RESTRICTION and PENALTIES: If prepayment is made prior to October 11, 1971, must pay a full year's interest (\$9,500.00) PLUS \$5,000.00 as additional penalty.

If prepayment is made after October 11, 1971, must pay interest to date PLUS a penalty equal to 1/2 of the interest that would accrue on the remaining months.

s Harry R. Waggoner

s Norma E. Waggoner

s Walter B. Waggoner

19 In construing this mortgage and the said note, the word "survivor" shall
20 include survivors, the term "mortgagor" shall include mortgagors; the singular
21 pronoun shall be taken to mean and include the plural, the masculine, the
22 feminine and the neuter, and all grammatical changes shall be made, assumed
23 and implied to make the provisions hereof apply equally to corporation and to
24 more than one individual; furthermore, the word "mortgagees" shall be construed
25 to mean the mortgagees named above, if all or both of them be living and if
26 not, then the survivor or survivors of them, because it is the intention of
27 the parties hereto that the said "note and this mortgage shall be held by the
28 said mortgagees as joint tenants with the right of survivorship and not as
29 tenants in common and that on the death of one, the moneys then unpaid on said
30 note as well as all rights and interest herein given to the mortgagees shall
31 vest forthwith in the survivor of them.

32 The mortgagor warrants that the proceeds of the loan represented by the

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Page 2 - Mortgage

13

9168

1 above described note and this mortgage are: for business or commercial
2 purposes other than agricultural purposes.

3 And said mortgagor covenants to and with the mortgagees, and their suc-
4 cessors in interest, that he is lawfully seized in fee simple of said premises
5 and has a valid, unencumbered title thereto, and will warrant and forever de-
6 fend the same against all persons; that he will pay said note, principal and
7 interest, according to the terms thereof; that while any part of said note
8 remains unpaid he will pay all taxes, assessments and other charges of every
9 nature which may be levied or assessed against said property, or this mort-
10 gage or the note above described, when due and payable and before the same
11 may become delinquent; that he will promptly pay and satisfy any and all liens
12 or encumbrances that are of may become liens on the premises, or any part
13 thereof, superior to the lien of this mortgage; that he will keep the buildings
14 now on or which may hereafter be erected on the premises insured in favor of
15 the mortgagees against loss or damage by fire, with extended coverage in the
16 sum of insurable value in a company or companies acceptable to the mortgagees
17 and will have all policies of insurance on said property made payable to the
18 mortgagees as their interest may appear and will deliver all policies of
19 insurance on said premises to the mortgagees as soon as insured; that he will
20 keep the buildings and improvements on said premises in good repair and will
21 not commit or suffer any waste of said premises.

22 Now, therefore, if said mortgagor shall keep and perform the covenants
23 herein contained and shall pay said note according to its terms, this convey-
24 ance shall be void, but otherwise shall remain in full force as a mortgage to
25 secure the performance of all of said covenants and the payment of said note;
26 it being agreed that if the mortgagor shall fail to make any payment or to
27 perform any covenant herein, or if a proceeding of any kind be taken to fore-
28 close any lien on said premises, or any part thereof, the mortgagees shall
29 have the option to declare the whole amount unpaid on said note or on this
30 mortgage at once due and payable; and this mortgage may be foreclosed at any
31 time thereafter. And if the mortgagor shall fail to pay any taxes or charges
32 or any lien, encumbrance or insurance premium as above provided for, the

1 mortgagees may at their option do so, and any payment so made shall be added
 2 to and become a part of the debt secured by this mortgage and shall bear
 3 interest at the same rate as said note without waiver, however, of any right
 4 arising to the mortgagees for breach of covenant; and this mortgage may be
 5 foreclosed at any time while the mortgagor neglects to repay any sums so paid
 6 by the mortgagees.

7 In the event of any suit or action being instituted to foreclose this
 8 mortgage, the mortgagor agrees to pay all reasonable costs incurred by the
 9 mortgagee for title reports and title search, all statutory costs and disburse-
 10 ments and such further sum as the trial court may adjudge reasonable as plain-
 11 tiff's attorney's fees in such suit or action, and if an appeal is taken from
 12 any judgment or decree entered therein mortgagor further promises to pay such
 13 sum as the appellate court shall adjudge reasonable as plaintiff's attorney's
 14 fees on such appeal, all such sums to be secured by the lien of this mortgage
 15 and included in the decree of foreclosure.

16 In case suit or action is commenced to foreclose this mortgage, the
 17 court upon motion of the mortgagees, may appoint a receiver to collect the
 18 rents and profits arising out of said premises during the pendency of such
 19 foreclosure and apply the same to the payment of the amount due under the
 20 mortgage, first deducting all proper charges and expenses attending the execu-
 21 tion of said trust.

22 Each and all of the covenants and agreements herein contained shall
 23 apply to, inure to the benefit of and bind the heirs, executors, administra-
 24 tors, successor in interest and assign of said mortgagor and of said
 25 mortgagees respectively.

26 On Parcel I is a building of which a portion has been leased by
 27 NORTH'S CHUCKWAGON RESTUARANT, when the said restuarant has its grand opening
 28 and is operating its restaurant business, mortgagees will release Parcels 2
 29 and 3 from the lien of this mortgage.

30 IN WITNESS WHEREOF, said mortgagor has hereunto set their hands the
 31 day and year first above written.

9170

1 State of Oregon) ss.
2 County of ~~Oregon~~ *KLAMATH*

3 BE IT REMEMBERED, That on this *13* day of October, 1970, before me,
4 the undersigned, a Notary Public in and for said county and state, personally
5 appeared the within named Harry R. Waggoner, and Norma E. Waggoner, husband
6 and wife, and Walter B. Waggoner, known to me to be the identical individuals
7 described in and who executed the within instrument and acknowledged to me
8 that they executed the same for the purposes therein contained.

9 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my
10 official seal the day and year last above written.

Ernest F. Jordan
Notary Public for Oregon
My Commission Expires: *5-15-72*

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14 STATE OF OREGON,) ss.
15 County of Klamath)

16 Filed for record at request of:
17 *TRANSAMERICA TITLE INSURANCE CO*
18 on this *13th* day of *OCTOBER* A. D., 19*70*
19 at *3:22* o'clock *PM* and duly
20 recorded in Vol. *M 70* of *MORTGAGES*
21 Page *9166*

22 *WM. D. MILNE*, County Clerk

23 By *Hazel Drazil* Deputy.
24 Fee *\$7.50*

25
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28
29 *Harry R. Waggoner*
30 *Box 664*
31 *Ct.*
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Page 5 - Mortgage

16
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