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VOL 171 PAGE 2703

This Indenture, made this 31st day of March, 1971, between

HARRY R. WAGGONER and NORMA E. WAGGONER, Husband and Wife, and J. RAY BYRNES

and IRENE M. BYRNES, Husband and Wife, hereinafter called "Mortgagor", and FIRST NATIONAL BANK OF OREGON, a national banking association, hereinafter called "Mortgagee";

WITNESSETH:

For value received by the Mortgagor from the Mortgagee, the Mortgagor has bargained and sold and does hereby grant, bargain, sell and convey unto the Mortgagee, all the following described property situate in

Klamath County, Oregon, to wit:

As per Schedule "A" attached and hereby made a part of this instrument:

SCHEDULE "A" -

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

PARCEL 1:

A portion of SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 39 South, Range 9 E., W.M., more particularly described as follows: Beginning at a point which is South 0°46' East a distance of 2204.25 feet and North 89°14' East a distance of 450.0 feet from the iron pin marking the Northwest corner of Section 3, Township 39 South, Range 9 E., W.M., said point being the Northwest corner of parcel conveyed by R. E. Wright et al, to Klamath County by deed Vol. 308, page 389; thence South 0°46' East a distance of 602.5 feet to the Southwest corner of parcel conveyed by R. E. Wright et al, to Klamath County by deed recorded in Vol. M-68, page 1534, records of Klamath County, Oregon; thence North 89°14' East a distance of 764.3 feet to a point which is 60.0 feet West of the West right of way line of the railroad spur track; thence South 0°35' East parallel to said right of way line a distance of 315.2 feet to a point; thence North 89°14' East a distance of 60.0 feet to the West right of way line of said spur track; thence following said right of way line South 0°37' East a distance of 535.0 feet, more or less, to a point which is 320.0 feet North of the South line of NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3 and being the Northeast corner of parcel conveyed by R. E. Wright et al, to W. L. Bullard, et ux, by deed Vol. 280, page 129; thence South 89°54' West along the North line of last described parcel a distance of 1221.4 feet to a point which is 50.0 feet East of the West line of said Section 3; thence North 0°46' West parallel to and 50.0 feet distant Easterly from said section line a distance of 1435.35 feet to a point; thence North 89°14' East a distance of 400.0 feet, more or less, to the point of beginning, said parcel being a portion of vacated Railroad Terminal Tracts.

SAVING AND EXCEPTING, a parcel of land in Section 3, Township 39 South, Range 9 East of the Willamette Meridian, for road purposes, being 25 feet in width on each side of the following described centerline; Beginning at the one-quarter section corner common to Sections 3 and 4 Township 39 South, Range 9 E., W.M.; thence South 0°46' East along the West section line of Section 3, 439.2 feet; thence North 89°44' East, 50 feet to the true point of beginning of this description; thence North 89°44' East, 1224.23 feet, more or less, to the East line of vacated Railroad Terminal Tracts, excepting that portion of land previously deeded to Klamath County in Vol. M-68, page 1534, Klamath County Deed Records.

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PARCEL 2:

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A parcel of land situated in the SW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9., E.W.M., described as follows:

Beginning at a point on the Southerly line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 3, which lies 50 feet Easterly of the West section line of said Section; thence North 89°54' East a distance of 1221.4 feet to the West right of way line of the OC&E Railroad; thence North following the Westerly right of way line of said railroad 160 feet; thence South 89°54' West a distance of 1221.4 feet to a point that is 50 feet East of the West section line and 160 feet North of the point of beginning; thence South 160 feet to the point of beginning.

Also, a tract of land situated in the SW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East, W.M., described as follows:

Beginning at a point on the Southerly line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 3 which lies 50 feet Easterly of the West section line of said section; thence North 160 feet to the true point of beginning; thence North 89°54' East a distance of 1221.4 feet to the West right of way line of the OC&E Railroad; thence North following the Westerly right of way of said railroad 160 feet; thence South 89°54' West a distance of 1221.4 feet to a point that is 50 feet East of the West section line and 160 feet North of the point of beginning; thence South 160 feet to the point of beginning.

PARCEL 3:

A tract of land situated in the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3 Township 39 South, Range 9 E., W.M., more particularly described as follows:

Beginning at the intersection of the South line of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 3 and the East right of way line of Washburn Way; thence North along the East right of way line of Washburn Way 40 feet to the true point of beginning, thence continuing North along the East right of way line of Washburn Way 620 feet to the North line of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 3; thence East 1220 feet along said North line; thence South 200 feet; thence West 610 feet; thence South 420 feet; thence West 610 feet to the point of beginning.

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A tract of land situated in the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 E., W.M., more particularly described as follows:

Beginning at the intersection of the South line of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 3 being the true point of beginning of this description; thence North along the East right of way line of Washburn Way 40 feet; thence East 610 feet; thence North 420 feet; thence East 610 feet; thence South 460 feet to the South line of the N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 3; thence West 1220 feet along said south line to the point of beginning.

Harry R. Waggoner
Harry R. Waggoner

Norma E. Waggoner
Norma E. Waggoner

J. Ray Byrnes
J. Ray Byrnes By Attorney-In-Fact

Irene M. Byrnes
Irene M. Byrnes

Dated: 3-31-71

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together with the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in anywise appertaining; also all such apparatus, equipment and fixtures now or hereafter situate on said premises, as are ever furnished by landlords in letting unfurnished buildings similar to the one situated on the real property hereinabove described, including, but not exclusively, all fixtures and personal property used or intended for use for plumbing, lighting, heating, cooking, cooling, ventilating or irrigating, linoleum and other floor coverings attached to floors, and shelving, counters, and other store, office and trade fixtures; also the rents, issues and profits arising from or in connection with the said real and personal property or any part thereof.

To Have and To Hold the same unto the Mortgagee, its successors and assigns, forever.

And the Mortgagor does hereby covenant to and with the Mortgagee, that he is lawfully seized in fee simple of the said real property, that he is the absolute owner of the said personal property, that the said real and personal property is free from encumbrances of every kind and nature, and that he will warrant and forever defend the same against the lawful claims and demands of all persons whomsoever.

N-127 2-70 - INDIVIDUAL - RESIDENTIAL OR BUSINESS

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This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained, to be by the Mortgagor kept and performed, and to secure the payment of the sum of \$ 300,000.00 and interest thereon in accordance with the tenor of a certain promissory note executed by HARRY R. WAGGONER and NORMA E. WAGGONER, Husband and Wife, and J. RAY BYRNES and IRENE M. BYRNES, Husband and Wife, dated March 31st, 19 71, payable to the order of the Mortgagee in installments not less than \$ 3,086.00, each, including interest, on the 15th day of each each month commencing April 15th, 19 71, until March 15th, 19 74, when the balance then remaining unpaid shall be paid.

The Mortgagor does hereby covenant and agree to and with the Mortgagee, its successors and assigns:

1. That he will pay, when due, the indebtedness hereby secured, with interest, as prescribed by said note, and all taxes, liens and utility charges upon said premises or for services furnished thereto.

2. That he will not commit or permit strip or waste of the said premises or any part thereof; that he will keep the real and personal property hereinabove described in good order and repair and in tenantable condition; that he will promptly comply with any and all municipal and governmental rules and regulations with reference thereto; that if any of the said property be damaged or destroyed by any cause, he will immediately reconstruct or repair the same so that, when completed, it shall be worth not less than the value thereof at the time of such loss or damage; provided, that if such loss or damage shall be caused by a hazard against which insurance is carried, the obligation of the Mortgagor to repair or reconstruct shall not arise unless the Mortgagee shall consent to the application of insurance proceeds to the expense of such reconstruction or repair.

3. That he will, at his own cost and expense, keep the building or buildings now or hereafter upon said premises, together with all personal property covered by the lien hereof, insured against loss by fire and against loss by such other hazards as the Mortgagee may from time to time require, in one or more insurance companies satisfactory to or designated by the Mortgagee in an aggregate amount not less than the amount of the indebtedness hereby secured (unless the full insurable value of such building or buildings is less than the amount hereby secured, in which event the Mortgagor shall insure to the amount of the full insurable value); that all policies of insurance upon said premises, including policies in excess of the amount hereinabove mentioned and policies against other hazards than those required, shall contain such provisions as the Mortgagee shall require and shall provide, in such form as the Mortgagee may prescribe, that loss shall be payable to the Mortgagee; that all such policies and receipts showing full payment of premiums therefor shall be delivered to and retained by the Mortgagee during the existence of this mortgage; that at least 5 days prior to the expiration of any policy or policies he will deliver to the Mortgagee satisfactory renewals thereof together with premium receipts in full; that if any policy or policies shall impose any condition upon the liability of the insurer or shall contain any "average clause" or other provision by which the insurer may be liable for less than the full amount of the loss sustained, he will, as often as the Mortgagee may require, provide the Mortgagee with all such evidence as it may request concerning the performance of such condition or the existence of any facts or the value of the property insured and, if it shall appear to the Mortgagee that the insurance is prejudiced by the acts or omissions of the Mortgagor or that the coverage is inadequate, the Mortgagor will do such acts and things and obtain such further insurance as the Mortgagee may require; that the Mortgagee may, at its option, require the proceeds of any insurance policies upon the said premises to be applied to the payment of the indebtedness hereby secured or to be used for the repair or reconstruction of the property damaged or destroyed.

4. That he will execute or procure such further assurance of his title to the said property as may be requested by the Mortgagee.

5. That in case the Mortgagor shall fail, neglect or refuse to do or perform any of the acts or things herein required to be done or performed, the Mortgagee may, at its option, but without any obligation on its part so to do, and without waiver of such default, procure any insurance, pay any taxes or liens or utility charges, make any repairs, or do any other of the things required, and any expenses so incurred and any sums so paid shall bear interest at 8% per annum and shall be secured hereby.

6. That he will not, without the prior written consent of Mortgagee, transfer his interest in said premises or any part thereof, whether or not the transferee assumes or agrees to pay the indebtedness hereby secured. Upon any application for Mortgagee's consent to such a transfer, Mortgagee may require from the transferee such information as would normally be required if the transferee were a new loan applicant. Mortgagee shall not unreasonably withhold its consent. As a condition of its consent to any transfer, Mortgagee may, in its discretion, impose a service charge not exceeding one percent of the original amount of the indebtedness hereby secured and may increase the interest rate on the indebtedness hereby secured by not more than one percent per annum.

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7. That, if any default be made in the payment of the principal or interest of the indebtedness hereby secured or in the performance of any of the covenants or agreements of this mortgage, the Mortgagee may, at its option, without notice, declare the entire sum secured by this mortgage due and payable and foreclose this mortgage.

8. That, in the event of the institution of any suit or action to foreclose this mortgage, the Mortgagor will pay such sum as the trial court and any appellate court may adjudge reasonable as attorney's fees in connection therewith and such further sums as the Mortgagee shall hereafter be required to pay for extensions of time, abstracts or title searches or

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7. That, if any default be made in the payment of the principal or interest of the indebtedness hereby secured or in the performance of any of the covenants or agreements of this mortgage, the Mortgagee may, at its option, without notice, declare the entire sum secured by this mortgage due and payable and foreclose this mortgage.

8. That, in the event of the institution of any suit or action to foreclose this mortgage, the Mortgagor will pay such sum as the trial court and any appellate court may adjudge reasonable as attorney's fees in connection therewith and such further sums as the Mortgagee shall have paid or incurred for extensions of abstracts or title searches or examination fees in connection therewith, whether or not final judgment or decree therein be entered and all such sums are secured hereby; that in any such suit, the court may, upon application of the plaintiff and without regard to the condition of the property or the adequacy of the security for this indebtedness hereby secured and without notice to the Mortgagor or any one else, appoint a receiver to take possession and care of all said mortgaged property and collect and receive any or all of the rents, issues and profits which had theretofore arisen or accrued or which may arise or accrue during the pendency of such suit; that any amount so received shall be applied toward the payment of the debt secured hereby, after first paying therefrom the charges and expenses of such receivership; but until a breach or default by the Mortgagor in one or more of his covenants or agreements herein contained, he may remain in possession of the mortgaged property and retain all rents actually paid to and received by him prior to such default.

9. The word "Mortgagor", and the language of this instrument shall, where there is more than one mortgagor, be construed as plural and be binding jointly and severally upon all mortgagors and the word "Mortgagee" shall apply to any holder of this mortgage. Masculine pronouns include feminine and neuter. All of the covenants of the Mortgagor shall be binding upon his heirs, executors, administrators, successors and assigns and inure to the benefit of the successors and assigns of the Mortgagee. In the event of any transfer of the property herein described or any part thereof or any interest therein, whether voluntary or involuntary or by operation of law, the Mortgagee may, without notice to the Mortgagor or any one else, once or often, extend the time of payment or grant renewals of indebtedness hereby secured for any term, execute releases or partial releases from the lien of this mortgage or in any other respect modify the terms hereof without thereby affecting the personal primary liability of the Mortgagor for the payment of the indebtedness hereby secured. No condition of this mortgage shall be deemed waived unless the same be expressly waived in writing by the Mortgagee. Whenever any notice, demand, or request is required by the terms hereof or by any law now in existence or hereafter enacted, such notice, demand or request shall be sufficient if personally served on one or more of the persons who shall at the time hold record title to the property herein described or if enclosed in a postpaid envelope addressed to one or more of such persons or to the Mortgagor at the last address actually furnished to the Mortgagee or at the mortgaged premises and deposited in any post office, station or letter box.

In Witness Whereof, the Mortgagor s have hereunto set their hands s and seal s the day and year first hereinabove written.

Harry R. Waggoner (SEAL)
Harry R. Waggoner

Norma E. Waggoner (SEAL)
Norma E. Waggoner

J. Ray Byrnes by Attorney-in-Fact (SEAL)
J. Ray Byrnes by Attorney-in-Fact

Irene M. Byrnes (SEAL)
Irene M. Byrnes

STATE OF OREGON

County of KLAMATH ss.

March 31 A. D. 19 71

Personally appeared the above-named HARRY R. WAGGONER and NORMA E. WAGGONER, and
IRENE M. BYRNES

acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

(Notary Seal)

Maune E. Byrnes
Notary Public for Oregon.

My Commission Expires: Sept. 23, 1974

STATE OF OREGON

2708

County of Klamath

March 31, 1971

Personally appeared Irene M. Byrnes, who, being sworn, stated that she is the attorney-in-fact for J. Ray Byrnes and that she executed the foregoing instrument by authority of and in behalf of said principal; and he acknowledged said instrument to be their act. Before me:

Official Seal

Milne D. Milne
Notary Public for Oregon

My Commission Expires: April 23, 1974

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of FIRST NATIONAL BANK OF OREGON

this 1st day of April A. D., 1971 at 12:13 o'clock P. M., and duly recorded in

Vol. M71 of Mtgs. on Page 2703

Fee \$9.00

By WM. D. MILNE, County Clerk 32
Capitula Milne

MORTGAGE

TO

FIRST NATIONAL BANK OF OREGON
Portland, Oregon

When Recorded, Mail to

Branch
FIRST NATIONAL BANK OF OREGON

Klamath Falls Branch
FIRST NATIONAL BANK OF OREGON
P. O. Box 608
Klamath Falls, Oregon 97601
(Address of Branch)

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