

65942

Vol. 72 Page 7415This Indenture, made this 7th day of July, 1972, between

HARRY R. WAGGONER and NORMA E. WAGGONER, Husband and Wife, and

WALTER B. WAGGONER and DONNA MARIE WAGGONER, 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:

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PARCEL 1:

A portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Twp. 39 S., R. 9 E.W.M., more particularly described as follows:

Beginning at an iron pin on the South right-of-way line of South Sixth Street as presently located and constructed, which bears S. 0°22'15" E. a distance of 48.5 feet from the Northwest corner of said NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence Easterly, along said right-of-way line a distance of 142.5 feet to a point; thence South at right angles to said right-of-way line a distance of 460.0 feet to a point; ~~thence West, parallel to said right-of-way line, a distance of 142.5 feet, more or less, to the West line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence North along said West line a distance of 460.0 feet to a point;~~ thence West, parallel to said right-of-way line, a distance of 142.5 feet, more or less, to the West line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence North along said West line a distance of 460.0 feet to the point of beginning.

PARCEL 2:

A tract of land situated in the SE $\frac{1}{4}$ of Sec. 3, Twp. 39 S., R. 9 E.W.M., more particularly described as follows:

Beginning at the East one-fourth corner of said Sec. 3; thence South 89°52' West 1,275.74 feet; thence South 00°21'47" East 54.10 feet to a one-half inch pipe on the Southerly right-of-way line of the Dalles-California Highway marking the Northeast corner of that parcel of land described in Deed Vol. 251 page 162, as recorded in the Klamath County Deed Records; thence continuing South 00°21'47" East along the East line of said parcel described in said Deed Vol. 251 page 162, 233.00 feet to the true point of beginning of this description; thence continuing South 00°21'47" East along said line 395.64 feet to the Northerly right-of-way line of the Oregon-California and Eastern Railway Company; thence North 67°41' West along said right-of-way line 156.57 feet (162 feet by record); thence North 00°55'30" West along the West line of said parcel described in said Deed Vol. 251 page 162, 334.24 feet; thence North 89°14' East 147.71 feet to the true point of beginning of this description, containing 1.25 acres, more or less, with bearings being based on the East line of the SE $\frac{1}{4}$ of Said Sec. 3 as being South 01°14' East.

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PARCEL 3:

A portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 3, Twp. 39 S., R. 9 E.W.M., more particularly described as follows:

Beginning at a one-half inch iron pin on the South right-of-way line of South Sixth Street, as the same is presently located and constructed, said point being on the West line of tract of land deeded to Miller by deed Vol. 251 page 162 and the East line of a tract of land deeded to Wheeler by deed Vol. 142 page 349, Klamath County Deed Records; Thence S. 0°55'30" E. along the line between the two above described tracts a distance of 291.6 feet to a 5/8 inch iron pin marking the Southeast corner of a tract of land deeded to United States National Bank of Oregon by deed recorded in Vol. M67, page 4075, Microfilm Records of Klamath County, Oregon, and the True Point of Beginning of this description; thence continuing S. 0°35'30" E. a distance of 275.64 feet, more or less, to the Northeasterly right-of-way line of the O.C. & E. Railroad; thence N. 67°41' W. along said right-of-way line a distance of 148.11 feet to the Southwest corner of said Wheeler tract; thence N. 0°55'30" W. along the West line of said Wheeler tract, a distance of 217.58 feet to the Southwest corner of said United States National Bank tract; thence N. 89°14' E. along the South line of said tract, a distance of 136.09 feet to the point of beginning.

PARCEL 4:

A tract of land situated in Tract 43, ENTERPRISE TRACTS, in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 3, Twp. 39 S., R. 9 E.W.M., Klamath County, Oregon, more particularly described as follows: Beginning at a point on the West line of said Tract 43, said point being South 0°00 $\frac{1}{2}$ ' East a distance of 432.75 feet and North 89°54' East a distance of 30.0 feet from the Northwest corner of said Sec. 3; thence South 0°00 $\frac{1}{2}$ ' East along the Westerly line of said Tract 43 a distance of 60.0 feet; thence North 89°54' East a distance of 250.00 feet; thence North 0°00 $\frac{1}{2}$ ' West a distance of 60.0 feet; thence South 89°54' West a distance of 250.00 feet, more or less, to the point of beginning.

ALSO a tract of land situated in Tract 43, ENTERPRISE TRACTS, in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 3, Twp. 39 S., R. 9 E.W.M., Klamath County Oregon, more particularly described as follows: Beginning at a point on the West line of said Tract 43, said point being South 0°00 $\frac{1}{2}$ ' East a distance of 492.75 feet and North 89°54' East a distance of 30.0 feet from the Northwest corner of said Section 3; thence South 0°00 $\frac{1}{2}$ ' East along the Westerly line of said Tract 43 a distance of 70.0 feet to the Northeasterly line of Pershing Way; thence South 55°50 $\frac{1}{2}$ ' East along the Northeasterly line of Pershing Way a distance of 302.15 feet to an iron pin; thence North 0°00 $\frac{1}{2}$ ' West a distance of 240.09 feet; thence South 89°54' West a distance of 250.0 feet, more or less, to the point of beginning.

grant, bargain, sell and convey unto the Mortgagee, all the following described property situate in

Klamath

County, Oregon, to wit:

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SAVING AND EXCEPTING THEREFROM a portion described as follows:

Beginning at the Section corner common to Sections 33 and 34, Township 38 South, Range 9 E.W.M., and Sections 3 and 4, Twp. 39 S., R. 9 E.W.M.; thence S. 0°00'30" E. along the Section line 237.75 feet; thence N. 89°54' E. 30 feet to the West line of Tract 43 of Enterprise Tracts which is the East right-of-way line of Washburn Way, which is the True Point of Beginning; thence S. 0°00'30" E. along the West line of Tract 43 of Enterprise Tracts 325.0 feet to the Northeasterly right-of-way of Pershing Way; thence S. 55°50'30" E. along the Northeasterly right-of-way of Pershing Way 12.08 feet; thence N. 0 deg. 00'30" W. parallel to the West line of Tract 43, 331.80 feet; thence S. 89 deg. 54' W. 10 ft. to the point of beginning.

H. A. Miller
W. A. Miller

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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.

Fee \$10.00 BY James J. [illegible] Deputy.

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 \$ 490,000.00 and interest thereon in accordance with the tenor of a certain promissory note executed by HARRY R. WAGGONER and NORMA E. WAGGONER and WALTER B. WAGGONER AND DONNA MARIE WAGGONER dated July 7th, 19 72, payable to the order of the Mortgagee in installments not less than \$ 4,682.70, each, including interest, on the 1st day of each month commencing September 1st, 19 72, until August 1st, 19 87, 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.

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 Mortgagee will

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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 Mortgagors have hereunto set their hands and seal, the day and year first hereinabove written.

[Signature] (SEAL)

[Signature] (SEAL)

[Signature] (SEAL)

[Signature] (SEAL)

STATE OF OREGON

County of Klamath

ss.

July 7 A. D. 1972

Personally appeared the above-named HARRY R. WAGGONER AND NORMA E. WAGGONER, AND

WALTER B. WAGGONER AND DONNA MARIE WAGGONER

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

[Signature]
Notary Public for Oregon.

(Notary Seal)

My Commission Expires: 6-24-73

STATE OF OREGON,
County of Klamath ss.

Filed for record at request of:
Klamath County Title
on this 7th day of July A. D., 1972
at 3:35 o'clock P. M. and duly
recorded in Vol. M72 of Morgages
Page 7415

WM. D. MILNE, County Clerk

By *[Signature]*

Fee \$10.00 Deputy