

72431

THIS INDENTURE, Made this 16th day of January, 1973, between
HARRY R. WAGGONER and NORMA E. WAGGONER, husband and wife,
 called herein mortgagor, whether singular or plural, for and in
 consideration of the sum of TWO HUNDRED THOUSAND AND NO/100 ----- (\$ 200,000.00) Dollars
 to them paid by ELMER C. LEMLER and ISABEL C. LEMLER, husband and
wife, as mortgagees, the said
 mortgagor does hereby grant, bargain, sell and convey unto ELMER C. LEMLER and ISABEL C.
LEMLER, husband and wife,
 not as tenants in common but with the right of survivorship as herein set out, 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:

PARCEL 1: A parcel of land lying in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 39 S.R. 9 E.W.M., in Klamath County, Oregon, and more particularly described as follows: Beginning at a point which is South 55.03 feet and South 89°14' West 630 feet from the quarter section corner common to Sections 2 and 3, Township 39 S.R. 9 E.W.M. which point is also South of (when measured at right angles to) the relocated center line of the Klamath Falls-Malin Highway; thence continuing South 89°14' West 79.4 feet to the Northwest corner of this description; thence South 0°18' East 137 feet; thence North 89°14' East 81.9 feet; thence North 0°18' West 137 feet to the point of beginning, containing 11,042 square feet.

EXCEPTING from the above described parcel a strip of land 8 feet wide running North and South on the West side of said above described parcel of land reserved for sidewalk purposes.

PARCEL 2: A tract of land described as follows: Beginning at an iron pin which lies on the Southerly right of way line of the Dalles-California Highway, 40 feet Southerly at right angles from the center line thereof, and which lies South 89°51' West a distance of 30 feet along the East-West quarter line and South 1°14' East parallel to the East Section line a distance of 42.03 feet, and South 89°14' West along the Southerly right of way line of the Dalles-California Highway 40 feet Southerly at right angles from the center line thereof, a distance of 550 feet from the brass plug in the pavement which marks the one quarter section corner common to section 2 and 3, Township 39 South, Range 9 E.W.M. Klamath County, and running thence: continuing South 89°14' West along the Southerly right of way line of the Dalles-California Highway 40 feet Southerly at right angles from the Center line thereof, a distance of 50 feet to an iron pin; thence South 1°14' East parallel to the Section line a distance of 150 feet to an iron pin; thence North 89°14' East parallel to the center line of the

Dalles-California Highway a distance of 50 feet to an iron pin; thence North 1°14' West parallel to said Section line, a distance of 150 feet, more or less, to the point of beginning, said tract being a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 39 S.R. 9 E.W.M., Klamath County, Oregon.

EXCEPTING therefrom that portion deeded to the State of Oregon, by and through its State Highway Commission by deed dated April 16, 1946, recorded April 21, 1946, on page 218 of Volume 188 of Deeds, records of Klamath County, Oregon.

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*together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any-
wise appertaining; and also all their estate, right, title and interest at law and equity therein or thereto, includ-
ing rents, issues and profits thereof.*

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TO HAVE AND TO HOLD the said premises with the appurtenances unto the said mortgagees, not as tenants in common but with the right of survivorship as herein set out, and to their assigns and the heirs of the survivor forever.

In this mortgage and note..... the term "survivor" includes survivors, the terms "payees" and "mortgagees" shall include the assigns of said named payees and Mortgagees and the heirs and assigns of the last survivor; the term "mortgagor" includes mortgagors; the singular pronoun includes the plural pronoun; the masculine includes the feminine and neuter, and the necessary grammatical changes required, to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

Whenever in this mortgage the term "mortgagees" is used, it shall be construed to mean the said.....
Elmer C. Lemler and Isabel C. Lemler, husband and wife.....
, if all or both of them be living, and if not then the survivor or survivors
 of them, because it is the intention of the parties hereto that the said note..... and this mortgage shall be held
 by the said Elmer C. Lemler and Isabel C. Lemler, husband and wife.....
, not in common but with the right of survivorship, that is, the unpaid
 balance of the money secured by this mortgage and the rights in the fee of the property described in this mortgage and any rights hereunder held by the mortgagees shall vest in the survivor of the mortgagees.

This conveyance is intended as a mortgage, however, and is given to secure the payment by the mortgagor to the mortgagees of the sum of TWO HUNDRED THOUSAND AND NO/100
 Dollars
 with interest, all according to the terms of that..... certain promissory note..... of even date herewith given
 by the mortgagor to the mortgagees, in words and figures substantially as follows:

\$200,000.00

January 16, 1973

On or before June 1, 1975, I promise to pay to the order of
 ELMER C. LEMLER and ISABEL C. LEMLER, husband and wife, or the survivor
 of them, at Klamath Falls, Oregon, TWO HUNDRED THOUSAND AND NO/100
 DOLLARS, with interest thereon at the rate of 9% per annum from date
 hereof until paid; interest to be paid monthly commencing February 16,
 1973, and if not so paid, all principal and interest, at the option of
 the holder of this note, to become immediately due and collectible.
 Any part hereof may be paid at any time. If this note is placed in
 the hands of an attorney for collection, I promise and agree to pay
 holder's reasonable attorney fees and collection costs, even though
 no suit or action is filed hereon; and if suit or action is filed,
 the amount of such reasonable attorney fees shall be fixed by the court
 or courts in which the suit or action, including any appeal therein,
 is tried, heard or decided.

HARRY R. WAGGONER

NORMA E. WAGGONER

This indenture is further conditioned upon the faithful observance by the mortgagor of the terms and conditions hereby expressly entered into by the mortgagor, to-wit:

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Any part hereof may be paid at any time. If this note is passed in the hands of an attorney for collection, I promise and agree to pay holder's reasonable attorney fees and collection costs, even though no suit or action is filed hereon; and if suit or action is filed, the amount of such reasonable attorney fees shall be fixed by the court or courts in which the suit or action, including any appeal therein, is tried, heard or decided.

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This indenture is further conditioned upon the faithful observance by the mortgagor of the following covenants hereby expressly entered into by the mortgagor, to-wit:

The mortgagor is lawfully seized of said premises, and now has a valid and unencumbered fee simple title thereto, and will forever warrant and defend the same against the claims and demands of all persons whomsoever;

The mortgagor will forthwith pay any liens or encumbrances now existing upon said premises superior to this mortgage;

The mortgagor will pay the said promissory note..... and all installments of interest thereon promptly as the same become due, according to the tenor of said note.....;

That so long as this mortgage shall remain in force the mortgagor will pay all taxes, assessments and other charges of every nature which may be levied or assessed upon or against the said premises when due and payable, according to law, and before the same become delinquent, and will also pay all taxes which may be levied or assessed on this mortgage or the debt thereby secured, and will promptly pay and satisfy any mechanic's liens or other liens or encumbrances that might by operation of law or otherwise become a lien upon the mortgaged premises superior to the lien of this mortgage, and will deliver all receipts therefor to the mortgagees;

The mortgagor will keep all the improvements erected on said premises in good order and repair and will not commit or suffer any waste of the premises hereby mortgaged;

The mortgagor will insure and keep insured the buildings now or hereafter on the said premises against damage or loss by fire for at least.....the insurable value..... in such company or companies as the mortgagees shall require, for the benefit of the mortgagees as their interest may appear, and that such insurance, together with all other insurance on said premises, and the policies evidencing the same shall be delivered and made payable to and retained by the mortgagees, and at any time said mortgagees may, at the expense of the mortgagor, cancel and surrender any or all of said policies and substitute therefor policies for like amount in such company or companies as they select, and in case of foreclosure, the mortgagor will keep said insurance in force, for the benefit of the purchaser at foreclosure sale, until the period of redemption expires.

NOW THEREFORE, if the said mortgagor shall pay said promissory note....., and shall fully satisfy and comply with the covenants hereinbefore set forth, then this conveyance shall be void, but otherwise to remain in full force and virtue as a mortgage to secure the payment of said promissory note..... in accordance with the terms thereof and the performance of the covenants and agreements herein contained; it being agreed that any failure to make any of the payments provided for in said note....., or this mortgage when the same shall become due or payable, or to perform any agreement herein contained, shall give to the mortgagees the option to declare the whole amount unpaid on said note..... or secured by this mortgage, at once due and payable and this mortgage by reason thereof may be foreclosed at any time thereafter. If the said mortgagor shall fail to pay any taxes or other charges or any lien or insurance premium as herein provided to be done, the mortgagees shall have the option to pay the same and any payment so made shall be added to and become a part of the debt secured by this mortgage, and draw interest at the rate of ten per cent per annum, without waiver, however, of any right arising from breach of any of the covenants herein.

It is understood and agreed that in the event mortgagors shall secure a purchaser for the real property herein described, mortgagees will satisfy the within mortgage upon payment to them of the sum of \$50,000.00 to be applied on the principal of the within mortgage.

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In case suit or action is commenced to foreclose this mortgage, the Court may upon motion of the mortgagees, appoint a receiver to collect the rents and profits arising out of said premises during the pendency of such foreclosure, and apply the same to the payment of the amount due under this mortgage, first deducting all proper charges including necessary attorney's fees and expenses attending the execution of said trust.

That in case suit or action is commenced for foreclosure of this mortgage, the mortgagor shall pay a reasonable sum to be determined by the Court, for an abstract of title of the mortgaged premises, or a continuation of any such abstract as may have been heretofore furnished by the mortgagor, or a title report therefor, at the option of the mortgagees; and in the event of such suit or action being instituted, the mortgagor, his heirs and assigns, shall also pay such sum as the court shall consider reasonable as attorney's fee for the benefit of the plaintiffs, in addition to the costs and disbursements provided by statute, and all such sums shall be secured by the lien of this mortgage.

IN WITNESS WHEREOF, the said mortgagor...S ha...hereunto set their... hand...S and seal...S. the day and year first above written.

[Signature] (SEAL)

[Signature] (SEAL)

(SEAL)

(SEAL)

MORTGAGE

(SURVIVORSHIP)

(FORM No. 691)

TO

STATE OF OREGON,

County of Klamath

I certify that the within instrument was received for record on the 17th day of January P. M., 1973, at 1:35 o'clock and recorded in book M 73 on page 613. Record of Mortgages of said County.

Witness my hand and seal of County affixed.

WM. D. MILNE

County Clerk-Recorder.

By *[Signature]*

503 STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

Return to:

H. J. Smith
538 Maine St.

fee \$10.00

STATE OF OREGON

County of Klamath

BE IT REMEMBERED, That on this 16th day of January, 1973, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named HARRY R. WAGGONER and NORMA E. WAGGONER, husband and wife,

known to me to be the identical individual...S. described in and who executed the within instrument and acknowledged to me that they...executed the same for the purposes therein contained.

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

[Signature]

Notary Public for Oregon

My Commission expires 12-21-74

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