

A-22928

THIS CONTRACT OF SALE of real property made this 10th day of May, 1973, between HARRY R. WAGGONER, hereinafter called "VENDOR", and TOWER ENTERPRISES, INC., an Oregon corporation, hereinafter called "PURCHASER";

W I T N E S S E T H:

Vendor agrees to sell to Purchaser and Purchaser hereby agrees to buy from Vendor, at the price and on the terms, covenants, conditions and provisions hereinafter contained, all of the following described property situate in the County of Klamath, State of Oregon, more particularly described as follows:

The real property described in Exhibit "A" attached hereto and thereby made a part hereof as though fully set forth hereat.

SUBJECT TO: The exceptions set forth in Exhibit "A".

SPECIAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

The purchase price of the property, which Purchaser agrees to pay, is the sum of \$435,000.00 payable as follows:

In monthly installments of \$3,638.34, or more, inclusive of interest, commencing on the 10th day of January, 1974, and a like installment on the 10th day of each month thereafter to and including the 10th day of November, 1993, with the balance of the deferred balance (both principal and interest) to be paid on the 10th day of December, 1993.

Interest on the deferred balance of the purchase price is fixed at the rate of eight (8%) percent per annum simple interest on the declining balances thereof. Interest commences on January 1, 1974.

All installments due Vendor from Purchaser under this agreement shall be paid without demand to the Escrow Holder hereinafter named. All such installments received shall be applied first to interest accrued to the date of receipt and then applied to principal.

After January 1, 1974, Purchaser shall have the privilege of increasing any monthly installment or to pay off in full the entire deferred balance of the purchase price together with interest accrued thereon to the date of payment. No partial payment, increased installment, nor payment for a partial conveyance pursuant to the

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1 provisions of this agreement, shall be credited in lieu of any regular
2 future installment nor excuse Purchaser from making the regular
3 installments specified in this contract. Notwithstanding the pro-
4 visions contained in this contract, Purchaser may prepay interest
5 during the calendar years of 1973, 1974 or 1975, for the year
6 following the year in which prepayment is made, but such prepayment
7 shall not be more than one year in advance.

8 In executing, delivering and accepting this contract, it is
9 mutually agreed by the parties hereto that, so long as no default
10 by Purchaser shall occur in any of the terms, conditions, provisions,
11 and covenants of this contract to be performed by Purchaser, Purchaser
12 shall be entitled to demand and receive, and Vendor shall, within
13 a reasonable time after demand, furnish partial conveyances of that
14 portion of Parcels 1 and 2 not improved on the basis of \$1.25 per
15 square foot. All payments for a partial conveyance under this pro-
16 vision shall be made to the Escrow Holder hereinafter named for
17 the credit of Vendor. Neither the acceptance of any payment for
18 a partial conveyance, nor the giving of a partial conveyance as pro-
19 vided for herein, nor otherwise, shall affect the liability of Pur-
20 chaser, nor the lien of this contract, on the remainder of the pro-
21 perty herein described for the full amount of all sums remaining
22 due, or to become due, Vendor secured by this contract. The costs
23 of preparing and executing any partial conveyance provided for
24 herein shall be borne and paid by Purchaser. The term "cost", as
25 used in this portion of this contract, shall mean and include, but
26 shall not be limited to, expenses relating to surveying, engineering,
27 title company charges and legal fees.

28 The provisions of the immediately preceding paragraph of this
29 agreement shall not be construed as subdividing any of the real
30 property described herein into parcels. (Other than as presently
31 plated.) Neither shall the same be construed as requiring either
32 party to subdivide any of the real property described herein into

1 parcels (other than as presently plated), nor as requiring either
2 party to construct on the real property described herein any improve-
3 ments. It is expressly understood and agreed that the undertaking
4 of any subdivision of any of the real property described herein into
5 parcels (other than presently plated), or the making of any improve-
6 ments thereon, shall be at the full risk and the expense of Purchaser.
7 Purchaser acknowledges that he has entered into this contract subject
8 to state and federal laws and regulations relating to the subdivision
9 and sale of real property by parcels or lots and assumes and agrees
10 to be bound by such state and federal laws and regulations relating
11 to such activity.

12 Purchaser has made an independent investigation and inspection
13 of the real property herein described and has entered into this
14 contract without relying on any statement or representation or cove-
15 nant not specifically embodied in this contract, and accepts the
16 property described in this agreement as is, in its present condition.

17 GENERAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

18 The real property above described, hereby sold to Purchaser
19 includes, all and singular, the tenements, hereditaments, rights,
20 easements, privileges and appurtenances thereunto belonging, or in
21 anywise appertaining, improvements thereon, together with the rever-
22 sions, remainders, rents, issues and profits thereof. The Vendor's
23 lien created by this agreement shall and does hereby include the
24 real property above described, together with, all and singular, the
25 tenements, hereditaments, rights, easements, privileges and appur-
26 tenances thereunto belonging, or in anywise appertaining, and all
27 improvements above described, or hereafter thereon, including, but
28 not limited to, the reversions, remainders, rents, issues and pro-
29 fits thereof. In addition, Purchaser hereby agrees that the Vendor's
30 lien is superior to any and all rights of Purchaser under and by
31 virtue of any homestead, stay or exemption laws now in force, or
32 which may hereafter become law.

1 In lieu of a partial conveyance, Vendor agrees that Vendor will
2 subordinate to any construction loan for the erection or building
3 of an improvement on either Parcel 1 or Parcel 2, or both, provided
4 that, as part of the project, there is a prior commitment for a
5 tenant therefore and that such tenant is acceptable to Vendor.

6 Vendor hereby warrants that he has good and merchantable title
7 to the real property above described, subject to the exceptions
8 above set forth. Vendor will, upon execution hereof, make and exe-
9 cute in favor of Purchaser, a good and sufficient warranty deed
10 conveying said premises free and clear as of this date of all encum-
11 brances, subject to the above set forth exceptions, and will place
12 said deed, together with the original of this agreement, and any
13 other conveyances of title or security instruments required hereby
14 in escrow at Klamath Falls Branch of First National Bank of Oregon
15 with instructions to said Escrow Holder that when and if the Purchaser
16 shall have paid the balance of the purchase money and interest as
17 above specified and shall have complied with all other terms and
18 conditions of this agreement, to deliver the same to Purchaser sub-
19 ject to the usual printed conditions and provisions of the standard
20 form of escrow instructions provided by said Escrow Holder.

21 Vendor shall furnish, at his own expense, a Purchaser's Title
22 Insurance Policy issued by Klamath County Title Co. under Order
23 No. A-22928 insuring Purchaser's title in the above described real
24 property in the amount of \$485,000.00 subject to the above set forth
25 exceptions and the printed conditions and exceptions contained in
26 the usual form of title policy issued by said title insurance company
27 and shall deposit said policy with the above named Escrow Holder
28 to be held in escrow for delivery to Purchaser along with Vendor's
29 warranty deed according to the terms herein specified.

30 Purchaser shall be entitled to possession of the above described
31 real property on date hereof. Purchaser shall remain in possession
32 so long as Purchaser is not in default hereunder. Purchaser shall

1 and hereby agrees to keep said real property in clean, sanitary,
2 sightly, attractive condition; to commit no waste or otherwise
3 damage or injure said premises; to maintain said premises in accord-
4 ance with the laws and the ordinances and regulations of any con-
5 stituted authority applying to said premises and to make up no
6 unlawful use thereof; to pay regularly and seasonably, and before
7 the same shall become delinquent, all taxes, assessments, and
8 charges of whatever nature (including additional charges by reason
9 of change of use) levied and assessed against said real property
10 and to pay and discharge all encumbrances thereafter placed thereon
11 by Purchaser; to permit no lien or other encumbrances to be filed
12 upon or placed against said premises without the written consent
13 of Vendor; and it is further understood and agreed for the purposes
14 of this provision that if Purchaser fails to pay or discharge any
15 taxes, assessments, liens, encumbrances, or charges, Vendor, at
16 his option and without waiver of default or breach of Purchaser,
17 and without being obliged to do so, may pay or discharge all or
18 any part thereof all of which said sums so paid by Vendor shall
19 become repayable by Purchaser, together with interest at the rate
20 of ten (10%) percent per annum, upon demand, payment of which is
21 part of the performance of this agreement by Purchaser and a condition
22 precedent to delivery of the warranty deed and other documents
23 by the Escrow Holder.

24 Purchaser agrees to keep the buildings now on or hereafter
25 placed upon the above described real property insured against loss
26 by fire or other casualty in an amount not less than maximum insur-
27 able value total insurance and shall obtain, at his own expense,
28 said insurance in the name of Vendor as the primary insured with
29 an endorsement thereon providing for loss payable to Vendor and
30 Purchaser as their respective interests may appear. The policy or
31 policies of insurance shall be delivered to Vendor, or, in lieu
32 thereof, a certificate of such insurance may be provided by Purchaser

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1 and delivered to Vendor. If a loss should occur for which insurance
2 proceeds shall become payable, the Purchaser may elect to either
3 rebuild or repair the portion of the building so destroyed, or apply
4 the proceeds to payment of the then unpaid balance of the purchase
5 money. If the Purchaser elects to rebuild, he shall sign such docu-
6 ments as may be required by Vendor to guarantee the application of
7 the insurance proceeds to the cost of such rebuilding or repair.

8 In the event any governmental agency or entity having the power
9 of eminent domain acquires by eminent domain, or by negotiated sale
10 in lieu of eminent domain, all, or any portion, of the real property
11 described in this contract, Vendor may require Purchaser to apply
12 all proceeds received by Purchaser from such acquisition (remaining
13 after payment by Purchaser of attorney fees, appraiser fees, and
14 related necessary and reasonable costs in connection with securing
15 said proceeds) which proceeds are hereinafter called "net proceeds"
16 toward the payment of the sums secured by this contract. Upon
17 receipt of said net proceeds, Purchaser shall notify Vendor of the
18 amount of said net proceeds and Vendor shall, within ten (10) days
19 after such notification, notify Purchaser in writing if Vendor
20 elects to have said net proceeds applied toward payment of the sums
21 secured by this contract. If Vendor fails to so notify Purchaser
22 of such election, Vendor shall conclusively be deemed to have
23 elected not to require Purchaser to apply said net proceeds toward
24 the sums secured by this contract. If Vendor elects to have said
25 net proceeds applied toward payment toward the sums secured by this
26 contract, the amount to be received by Vendor shall not exceed the
27 total of the principal plus accrued interest to the date of receipt
28 thereof by Vendor, and all such sums shall be paid to the Escrow
29 Holder named herein. Regardless of whether Vendor elects to have
30 said net proceeds applied to the sums secured by this contract,
31 Vendor will join in any conveyance required by the governmental
32 agency or entity acquiring a portion or all of the real property

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1 described herein by eminent domain, but Vendor shall not be required
2 to partially convey more property than that which is acquired by such
3 governmental agency or entity. Vendor shall not be obligated to
4 participate in any negotiations with such governmental agency or
5 entity. Any notice or notices required to be given by Purchaser
6 to Vendor pursuant hereto shall be in writing, and shall be deemed
7 given when the same is deposited in the United States mail as regis-
8 tered mail, postage prepaid, addressed to Vendor at the last address
9 of Vendor shown on the records of the Escrow Holder.

10 If Purchaser shall sell said real property described herein
11 and securing the unpaid balance of this contract, Vendor may elect
12 to permit the subsequent Purchaser to assume the balance of Pur-
13 chaser's obligation secured hereby, or to demand payment from
14 Purchaser, or the transferee of said Purchaser, or both (at the
15 option of the Vendor) of such portion of the deferred balance as
16 Vendor may consider satisfactory, or declare the entire balance
17 of the deferred balance due and payable. This clause cannot be
18 waived, unless Purchaser gives Vendor notice of such sale in
19 writing and Vendor, after receipt of such written notice, accepts
20 a payment from the subsequent Purchaser. The written notice pro-
21 vided for herein shall be deemed given when the same is deposited
22 in the United States mail as registered mail, addressed to the last
23 address of Vendor shown on the records of the Escrow Holder.

24 Vendor may appear in or defend any action or proceeding at law,
25 in equity, or in bankruptcy, affecting in any way the security hereof,
26 and in such event, Vendor shall be allowed and paid, and Purchaser
27 hereby agrees to pay, all costs, charges and expenses, including
28 costs of evidence of title or validity and priority of the security
29 and attorney fees in a reasonable sum, incurred in any such action
30 or proceeding in which Vendor may appear, which shall bear interest
31 at ten (10%) percent from date of demand therefor. Failure of Pur-
32 chaser to pay Vendor for such costs, charges and expenses within

1 ninety (90) days from date of demand therefor shall constitute a
2 breach of this contract.

3 If Purchaser shall fail to perform any of the terms of this
4 agreement, time of payment and performance being of the essence,
5 Vendor shall, at his option, subject to the requirements of notice
6 as herein provided, have the following rights:

7 (a) To foreclose this contract by strict foreclosure in
8 equity;

9 (b) To declare the full unpaid balance of the purchase
10 price immediately due and payable; and

11 (c) To specifically enforce the terms of this agreement
12 by suit in equity.

13 Purchaser shall not be deemed in default for failure to perform
14 any covenant or condition of this contract, other than the failure
15 to make payments as provided for herein, until notice of said
16 default has been given by Vendor to Purchaser and Purchaser shall
17 have failed to remedy said default within thirty (30) days after the
18 giving of the notice.

19 If Purchaser shall fail to make payments as herein provided and
20 said failure shall continue for more than thirty (30) days after
21 the payment becomes due, Purchaser shall be deemed to be in default
22 and Vendor shall not be obligated to give notice to Purchaser of
23 a declaration of said default.

24 Where notice in writing is required by Vendor to the Purchaser,
25 such notice shall be deemed given when the same is deposited in the
26 United States mail as registered mail, addressed to the last address
27 of Purchaser shown on the records of the Escrow Holder.

28 No waiver by Vendor of any breach of any covenant of this agree-
29 ment shall be construed as a continuing waiver of any subsequent
30 breach of such covenant nor as a waiver of any breach of any other
31 covenant nor as a waiver of the covenant itself..

32 In the event any suit or action is commenced to foreclose this
Contract, the court having jurisdiction of the case may, upon motion
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1 by Vendor, appoint a receiver to collect the rents and profits arising
2 out of the above described real property and to take possession, manage-
3 ment and control of the same during the pendency of such foreclosure
4 proceeding or until payment of the obligations hereby secured, and
5 apply said rents and profits to the payment of the amount due here-
6 under, first deducting all proper charges and expenses attending the
7 execution of said receivership.

8 Upon the commencement of any suit or action to collect the indebted-
9 ness or disbursements, secured hereby or any part thereof, or to
10 enforce any provision of this contract by specific performance, fore-
11 closure, or otherwise, there shall become due, and Purchaser agrees
12 to pay to Vendor, in addition to all statutory costs and disbursements,
13 any amount Vendor may incur or pay for any title report, title search,
14 insurance of title, or other evidence of title subsequent to the date
15 of this contract on any of the real property above described and
16 this contract shall be security for the payment thereof.

17 In the event any suit or action is instituted to collect the
18 indebtedness or disbursements secured hereby, or any part thereof,
19 or to enforce any provision of this contract by specific performance,
20 or foreclosure, or otherwise, the prevailing party, at trial, or
21 on appeal, shall be entitled to such reasonable attorney's fees as
22 shall be fixed by the court having jurisdiction of the case, in
23 addition to statutory costs and disbursements.

24 Upon delivery of any partial conveyance from Vendor to Purchaser,
25 as provided herein, and the payment of the full consideration therefor,
26 the terms, covenants, conditions and provisions of this contract
27 shall not extend to, nor be binding upon, the real property conveyed
28 by such partial conveyance.

29 This agreement contains the full understanding of the parties
30 with respect to the subject hereof and no modification hereof shall
31 be given effect unless the same be in writing subscribed by the
32 parties hereto or their successors in interest.

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1 This agreement shall bind and inure to the benefit of, as the
2 circumstances may require, the parties hereto, and their respective
3 successors, heirs, executors, administrators and assigns.

4 In construing this agreement, the singular shall include both
5 the singular and the plural and the masculine both the masculine
6 and feminine.

7 WITNESS the hands of the parties hereto the day and year first
8 above written.

9
10 Harry R. Waggoner (SEAL)
11

12 TOWER ENTERPRISES, INC.

13
14 By Richard A. Van Osdel
15 (SEAL)

16 By Bill J. Skillington
17

18 STATE OF OREGON)
19 County of Klamath) ss.
20

21 On the 9th day of May, 1973, personally appeared
22 the above named Harry R. Waggoner and acknowledged the foregoing
23 instrument to be his voluntary act and deed.

24 Before me:

25 (SEAL)
26 Notary Public for Oregon
My commission expires: 8-5-75

27 STATE OF OREGON)
28 County of Klamath) ss.

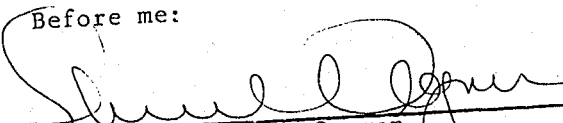
29 On the 10th day of May, 1973, personally
30 appeared Richard A. Van Osdel and Bill J. Skillington
31 who, being duly sworn, each for himself and
32 not one for the other, did say that the former is the Secretary

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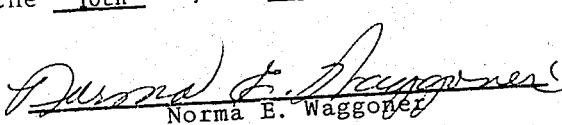
1 and that the latter is the President of TOWER
2 ENTERPRISES, INC., an Oregon corporation, and that the seal affixed
3 to the foregoing instrument is the corporate seal of said corporation
4 and that said instrument was signed and sealed in behalf of said cor-
5 poration by authority of its board of directors; and each of them
6 acknowledged said instrument to be its voluntary act and deed.

7 Before me:

8 
9 Notary Public for Oregon
10 My commission expires: 8-5-75

11
12 KNOW ALL MEN BY THESE PRESENTS that NORMA E. WAGGONER does
13 hereby agree to execute such conveyances or evidences of title as
14 shall be necessary to provide Purchaser named in the foregoing Con-
15 tract of Sale fee simple title to the real property described in said
16 Contract of Sale subject only to the exceptions set forth in said
17 Contract of Sale.


18 WITNESS my hand and seal the 10th day of May, 1973.

19  (SEAL)
20 Norma E. Waggoner

21
22 STATE OF OREGON)
23 County of Klamath) ss.

24 On the 10th day of May, 1973, personally appeared the
25 above named Norma E. Waggoner and acknowledged the foregoing instru-
26 ment to be her voluntary act and deed.

27 Before me:

28 
29 Notary Public for Oregon
30 My commission expires: 8-5-75

31
32 Contract of Sale -11-

EXHIBIT "A"

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

PARCEL 1:

A portion of Tract 43, ENTERPRISE TRACTS, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the West line of Tract 43, Enterprise Tracts in Klamath County, Oregon, which point is South $0^{\circ}00\frac{1}{2}'$ East 362.75 feet, and thence North $89^{\circ}54'$ East, 30 feet from the section corner common to Sections 33 and 34, Township 38 South, Range 9 East of the Willamette Meridian, and Sections 3 and 4, Township 39 South, Range 9 East of the Willamette Meridian; thence North $89^{\circ}54'$ East a distance of 250.0 feet; thence North $0^{\circ}00\frac{1}{2}'$ West a distance of 125.0 feet; thence South $89^{\circ}54'$ West, a distance of 250.0 feet to the West line of said Tract 43; thence South $0^{\circ}00\frac{1}{2}'$ East, along said West line, a distance of 125.0 feet to the point of beginning.

PARCEL 2:

A tract of land situated in Tract 43, Enterprise Tracts, in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the West line of said Tract 43, said point being South $0^{\circ}00\frac{1}{2}'$ East a distance of 362.75 feet and North $89^{\circ}54'$ East a distance of 30.0 feet from the Northwest corner of said Section 3; thence South $0^{\circ}00\frac{1}{2}'$ East along the Westerly line of said Tract 43 a distance of 70.0 feet; thence North $89^{\circ}54'$ East a distance of 250.0 feet; thence North $0^{\circ}00\frac{1}{2}'$ West a distance of 70.0 feet to an iron pin; thence South $89^{\circ}54'$ West a distance of 250.0 feet, more or less, to the point of beginning.

PARCEL 3:

A tract of land situated in Tract 43, ENTERPRISE TRACTS, in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the West line of said Tract 43, said point being South $0^{\circ}00\frac{1}{2}'$ East a distance of 432.75 feet and North $89^{\circ}54'$ East a distance of 30.0 feet from the Northwest corner of said Section 3; thence South $0^{\circ}00\frac{1}{2}'$ East along the Westerly line of said Tract 43 a distance of 60.0 feet; thence North $89^{\circ}54'$ East a distance of 250.0 feet; thence North $0^{\circ}00\frac{1}{2}'$ West a distance of 60.0 feet; thence South $89^{\circ}54'$ West a distance of 250.0 feet, more or less, to the point of beginning.

ALSO a tract of land situated in Tracts 43, ENTERPRISE TRACTS, in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the West line of said Tract 43, said point being South $0^{\circ}00\frac{1}{2}'$ East a distance of 492.75 feet and North $89^{\circ}54'$ East a distance of 30.0 feet from the Northwest corner of said Section 3; thence South $0^{\circ}00\frac{1}{2}'$ East along the Westerly line of said Tract 43 a distance of 70.0 feet to the Northeasterly line of Pershing Way; thence South $55^{\circ}50\frac{1}{2}'$ East along the Northeasterly line of Pershing Way a distance of 302.15 feet to an iron pin; thence North $0^{\circ}00\frac{1}{2}'$ West a distance of 240.09 feet; thence South $89^{\circ}54'$ West a distance of 250.0 feet, more or less, to the point of beginning.

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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, Township 39 South, Range 9 E.W.M.; thence South 0°00'30" East along the Section line 237.75 feet; thence North 89°54' East 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 South 0°00'30" East along the West line of Tract 43 of Enterprise Tracts 325.0 feet to the Northeasterly right-of-way of Pershing Way; thence South 55°50'30" East along the Northeasterly right-of-way of Pershing Way 12.08 feet; thence North 0°00'30" West parallel to the West line of Tract 43, 331.80 feet; thence South 89°54' West 10 feet to the point of beginning.

SUBJECT TO: Liens and assessments of Klamath Project and Klamath Irrigation District, and regulations, easements, contracts, water and irrigation rights in connection therewith; easement, for transmission line, including the terms and provisions thereof, given by the United States National Bank of Portland, Trustee under the Last Will and Testament of Walter H. Beane, deceased, and Full Gospel Tabernacle of Klamath Falls, Oregon, to The California Oregon Power Company, a California Corporation, dated March 20, 1959, recorded March 25, 1959, in Deed Vol. 311 page 34, records of Klamath County, Oregon, (affects p. 1); Right of way for transmission line, including the terms and provisions thereof, conveyed by Ralph D. Jones and Rosalia C. Jones, husband and wife, to The California Oregon Power Company, a corporation, dated March 20, 1959, recorded March 25, 1959, in Deed Vol. 311 page 36, Records of Klamath County, Oregon, (affects p. 2 and 3); rights of way apparent thereon.

STATE OF OREGON, }
County of Klamath } ss.

Filed for record at request of:

KLAMATH COUNTY TITLE CO

on this 11th day of May A. D., 19 73
at 9:53 o'clock A. M. and duly
recorded in Vol. M 73 of DEEDS
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WM. D. MILNE, County Clerk

By Paul Brazil Deputy.
Fee \$ 26.00

Ret: Klamath County Title Co