

THIS MORTGAGE, Made this 24<sup>th</sup> day of October, 1979, by

NORCO, a partnership consisting of RONALD D. CONE, BETHEL M. CONE, and ROBERT S. GADDIS; and WALTER E. REMSTEDT, as his sole property,

hereinafter called "Mortgagor", to

HARRY R. WAGGONER

hereinafter called "Mortgagee";

WITNESSETH:

That Mortgagor, for valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey, mortgage, and confirm unto Mortgagee, his heirs, executors, administrators, successors, and assigns, the property situate in the County of Klamath, State of Oregon described in Exhibit "A" attached hereto and thereby made a part hereof as though fully set forth hereat.

TOGETHER WITH:

1. The tenements, hereditaments, and appurtenances now or hereafter used or usable in connection with the above described real property;
2. All leases, permits, licenses, privileges, rights-of-way, and easements, written or otherwise, now held by mortgagor, or hereafter issued, extended or renewed;
3. All improvements now on or hereafter placed upon said real property during the term of this mortgage, including all fixtures, now or hereafter a part of, or used in connection with, said improvements.
4. All rights to the use of water for irrigation of said real property and for domestic use thereon to which said real property is now or may hereafter become entitled, or which may hereafter be used on said real property, however the same may be evidenced, together with all shares of stock or shares of water, if any, in any ditch or irrigation company which in any manner entitles the legal or equitable owner of said real property to water for irrigation or domestic purposes upon said real property.

THIS MORTGAGE IS GIVEN TO SECURE THE FOLLOWING:

1. Performance by Mortgagor of the covenants and agreements of Mortgagor contained in this mortgage instrument;
2. The payment of that certain promissory note of even date in the principal sum of \$216,000.00, with interest as provided in said note, payable to the order of Mortgagee; and,
3. Payment of any sum or sums advanced, incurred, or paid by Mortgagee, to, for, or on account of Mortgagor as provided in this mortgage instrument.

TO HAVE AND TO HOLD the said mortgaged property to the said Mortgagee, his heirs, executors, administrators successors and assigns until the obligations secured by this mortgage instrument have been fully discharged.

MORTGAGOR COVENANTS AND AGREES:

1. Warranty of Title: That he is lawfully seized of the above described real property in fee simple, has good right and lawful authority to mortgage the same, and that said real property is free from all encumbrances, except as above set forth, and that Mortgagor will warrant and defend the same forever against the lawful claims and demands of all persons whomsoever, and this covenant shall not be extinguished by any foreclosure of this mortgage instrument, but shall run with the land.

2. Waiver of Homestead and Exemption: That he does hereby release and waive all rights under and by virtue of any homestead or exemption laws now in force, or which may hereafter become law.

3. Prompt Performance and Payment: To perform all obligations and pay all sums of money (both principal and interest at the rates specified in the note or in this mortgage instrument) secured hereby promptly when due.

4. Protection of Security: To keep the mortgaged property, including, but not limited to, buildings, structures, fixtures, permanent plantings, trees, and orchards, if any be in existence on the date hereof, in good condition and repair, not to remove or demolish, nor permit the removal or demolition of any thereof; to comply with all laws, rules and regulations made by any duly constituted authority applicable to the mortgaged property; to keep the mortgaged property free from liens of every kind; not to commit nor permit any waste to or on the mortgaged property; and not to permit nor to commit anything which shall impair the security created by this mortgage instrument.

5. Payment of Taxes and Assessments: To pay regularly and seasonably, and before the same shall become delinquent, all taxes, assessments, and charges of whatever nature (including additional charges by reason of change of use) levied and assessed against the mortgaged property, or any part thereof.

6. Fire Insurance: To keep buildings and improvements now on, or hereafter placed upon, the above

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1 described real property insured against loss by fire or other casualty in an amount not less than maximum  
 2 insurable value as determined by the insurance carrier and shall obtain, at his own expense, an insurance  
 3 endorsement thereon providing for loss payable to Mortgagee and Mortgagor as their respective interests  
 4 may appear. The policy or policies of insurance shall be delivered to Mortgagee, or in lieu thereof, a  
 5 certificate of such insurance may be provided by Mortgagor and delivered to Mortgagee. If a loss should  
 6 occur for which insurance proceeds shall become payable, the Mortgagor may elect to either rebuild or  
 7 repair the portion of the building or improvements so destroyed, or apply the proceeds to payment of the  
 8 unpaid balance of principal and interest secured by this mortgage instrument. If the Mortgagor elects to  
 9 rebuild, he shall sign such document as may be required by Mortgagee to guarantee the application of the  
 10 insurance proceeds to the cost of such building or repair. If the Mortgagor elects to apply the insurance  
 11 proceeds toward payment of the obligation secured by this mortgage instrument, any such sums so received  
 12 by Mortgagee shall not be in lieu of, nor credited to, the next regular installment, but shall be applied by  
 13 Mortgagee first to interest accrued to the date of such payment and then toward the reduction of  
 14 principal.

15 7. Condemnation: In the event any governmental agency or entity having the power of eminent  
 16 domain acquires by eminent domain, or by negotiated sale in lieu of eminent domain, all, or any portion,  
 17 of the real property described in this mortgage instrument, Mortgagee may require Mortgagor to apply all  
 18 proceeds received by Mortgagor from such acquisition (remaining after payment by Mortgagor of attorney's  
 19 fees, appraiser's fees, and related necessary and reasonable costs in connection with securing said proceeds),  
 20 which proceeds are hereinafter called "net proceeds", toward the payment of the sums secured by this  
 21 mortgage instrument. Upon receipt of said net proceeds, Mortgagor shall notify Mortgagee of the amount  
 22 of said net proceeds and Mortgagee shall, within ten (10) days after such notification, notify Mortgagor in  
 23 if Mortgagee elects to have said net proceeds applied toward payment of the sums secured by this mortgage  
 24 instrument. If Mortgagee fails to so notify Mortgagor of such election, Mortgagee shall conclusively be  
 25 deemed to have elected not to require Mortgagor to apply said net proceeds toward the sums secured by  
 26 this mortgage instrument. If Mortgagee elects to have said net proceeds applied toward payment toward the  
 27 sums secured by this mortgage instrument, the amount to be received by Mortgagee shall not exceed the  
 28 total of the principal secured by this mortgage instrument, plus accrued interest thereon to the date of re-  
 29 ceipt thereof by Mortgagee. Regardless of whether Mortgagee elects to have said net proceeds applied to the  
 30 sums secured by this mortgage instrument, Mortgagee shall release from the lien of this mortgage instrument  
 31 so much of the real property above described acquired by such governmental agency or entity by eminent  
 32 domain, but Mortgagee shall not be required to partially release more property than that which is acquired  
 33 by such governmental agency or entity. Mortgagee shall not be obligated to participate in any negotiations  
 34 with such governmental agency or entity.

35 8. Expenses Incurred by Mortgagee to Protect Security: If Mortgagor fails to pay or discharge any  
 36 taxes, assessments, liens, encumbrances, or charges to be paid by Mortgagor as provided in this mortgage  
 37 instrument, Mortgagee, at his option and without waiver of default or breach of Mortgagor, and without  
 38 being obligated to do so, may pay or discharge all or any part thereof. Mortgagee may appear in or  
 39 defend any action or proceeding at law, in equity, or in bankruptcy, affecting in any way the security  
 40 hereof, and, in such event, Mortgagee shall be allowed and paid, and Mortgagor hereby agrees to pay, all  
 41 costs, charges and expenses, including costs of evidence of title or validity and priority of the security  
 42 created by this mortgage instrument and reasonable attorney's fees to be awarded by the court, at trial or  
 43 on appeal, incurred by Mortgagee in any such action or proceeding in which Mortgagee may appear. All  
 44 sums so paid or advanced or incurred by Mortgagee shall become repayable by Mortgagor, together with  
 45 interest at the rate of ( 10 %) percent per annum, upon demand.

46 9. Time Is Material and Of the Essence: Time is material and of the essence hereof; in the event of  
 47 default of the payment of the indebtedness evidenced by the note referred to in this mortgage instrument,  
 48 or any installment of the principal sum or interest thereon, or any part thereof, or in the repayment of  
 49 any disbursement authorized by the terms of this mortgage and actually made by Mortgagee, or in the  
 50 repayment of any expense or obligation payable by the Mortgagor but paid by the Mortgagee, as provided  
 51 in this mortgage instrument, or in the event of the breach of any of the covenants or agreements by  
 52 Mortgagor, Mortgagee may at once proceed to foreclose this mortgage for the amount due, or in the case  
 53 of default as aforesaid, or in the event of the violation, non-performance or breach of any of the cove-  
 54 nants, conditions, agreements, or warranties herein or in the promissory note secured by this mortgage, or  
 55 in case of the actual or threatened demolition or removal of any building, structure, improvement,  
 56 permanent planting, tree or orchards on or to be erected on the mortgaged property by Mortgagor without  
 57 the written permission of Mortgagee, the entire principal sum of the promissory note hereby secured and  
 58 the whole amount of all indebtedness owing by or chargeable to Mortgagor under the provisions of this  
 59 mortgage or intended to be secured hereby shall, at the election of Mortgagee, become immediately due and  
 60 payable without notice although the time expressed in said note for the payment thereof shall not have  
 61 arrived and suit may immediately be brought without notice to Mortgagor, and a decree be had to sell the  
 62 mortgaged property, or any part or parts thereof, either together or in parcels, with all and every of the  
 63 appurtenances, or any part thereof, in the manner prescribed by law, and out of the monies arising from  
 64 said sale to repay said indebtedness, including both principal and interest, together with the costs and  
 65 charges of making such sale and suit for foreclosure and also the amounts of all sums advanced or paid  
 66 by Mortgagee to or for the account of Mortgagor, with interest thereon as herein provided, including such

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payments of liens, taxes, or other encumbrances as may have been made by Mortgagee by reason of provisions herein given, and inclusive of interest thereon, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to Mortgagor.

10. Costs of Title in the Event of Foreclosure: Upon the commencement of any suit to collect the indebtedness or disbursements, secured hereby, or any part hereof, or to enforce any provisions of this mortgage instrument, by foreclosure or otherwise, there shall become due, and Mortgagor agrees to pay to Mortgagee, in addition to all statutory costs and disbursements, any amount Mortgagee may incur or pay for any title report, title search, insurance of title, or other evidence of title subsequent to the date of this mortgage instrument on any of the real property above described in this mortgage instrument and this mortgage instrument shall be security for the payment thereof.

11. Attorney Fees to Prevailing Party: In the event any suit or action is instituted to collect the indebtedness or disbursements secured hereby, or any part thereof, or to enforce any provision of this mortgage instrument by foreclosure, or otherwise, the prevailing party, at trial or on appeal, shall be entitled to such reasonable attorney's fees as shall be fixed by the court having jurisdiction of the case, in addition to statutory costs and disbursements.

12. Waiver: No waiver by Mortgagee of any breach of any covenant or agreement of this mortgage instrument by Mortgagor shall be construed as a continuing waiver of any subsequent breach of such covenant, nor as a waiver of any breach of any other covenant, nor as a waiver of the covenant itself, nor as a waiver of this provision.

13. Binding Effect of Mortgage Instrument: This mortgage instrument contains a full understanding of the Mortgagor and the Mortgagee with respect to the provisions set forth herein and no modification of this mortgage instrument shall be given effect unless the same is in writing, subscribed by the Mortgagor and the Mortgagee (or their respective successor in interest) and made of record in the same manner as this mortgage instrument is made of record.

14. Notices: Any notice or notices required to be given by either Mortgagor to Mortgagee or Mortgagee to Mortgagor pursuant to any provision of this mortgage instrument shall be in writing, and shall be deemed given when the same is deposited in the United States mail as registered mail, postage prepaid, addressed to the party to whom notice is to be given at the last address of such party known by the party giving such notice. In lieu of mailing such notice, such notice may be delivered in person to the party to whom notice is to be given and execution by the person to whom notice is to be given of a receipt of such notice shall be conclusive evidence of delivery of such notice.

15. Binding Effect and Construction of Mortgage Instrument: This mortgage instrument shall bind and inure to the benefit of, as the circumstances may require, the parties hereto, and their respective heirs, executors, administrators, successors, and assigns. In construing this mortgage instrument, the singular shall include both the singular and the plural and the masculine the masculine, the feminine, and the neuter. The headings contained in this mortgage instrument are for convenience only and are not to be construed as part of this mortgage instrument. To the extent that any exhibit is attached to this mortgage instrument, the same is hereby incorporated into this mortgage instrument as though fully set forth at the place in this mortgage instrument at which reference to said exhibit is made.

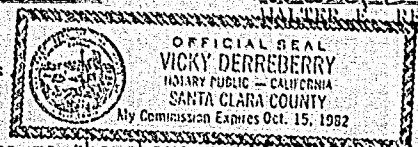
16. Subordination Clause: So long as this mortgage is not in default, upon notice by Mortgagor and payment by Mortgagor to Mortgagee in a sum equal to \$24,300.00\*\*\*\*\*, Mortgagee will subordinate his interest herein to a loan or loans and the encumbrances representing the same provided that the moneys so borrowed shall be expended for the improvement of the real property representing the security hereunder, and provided further that not more than 25% of the amount subordinated to shall be expended for architectural, engineering and other similar non-material expenses (excluding labor costs). Mortgagee agrees to execute any and all documents necessary to effectuate this agreement within 15 days after the presentation of the same to Mortgagee. A payment necessary hereunder need not be made until the execution of such documents by the Mortgagee as may be necessary to subordinate his interest, in the judgment of Mortgagor's then lender. All amounts paid to Mortgagee under this provision shall be applied to the remaining balance of the obligation or obligations which are subordinated. The installment payments on the remaining balance of such note or notes, after deducting such payment, shall be amortized over a term equivalent to the original term of said note or notes, the due date of each note, however, shall not be extended.

*Ronald D. Cone*  
RONALD D. CONE

*Bethel M. Cone*  
BETHEL M. CONE

*Robert S. Gaddis*  
ROBERT S. GADDIS  
STATE OF *California* )  
County of *San Clara* )

*Walter E. Remstedt*  
WALTER E. REMSTEDT



Personally appeared before me the above named RONALD D. CONE, BETHEL M. CONE and ROBERT S. GADDIS, Partners in NORCO, and WALTER E. REMSTEDT, and who are known to me to be the identical individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

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

*Vicky Derreberry*  
NOTARY PUBLIC FOR  
MY COMMISSION EXPIRES 10-15-92



## EXHIBIT "A"

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

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 the point of beginning.

PARCEL 5:

A parcel of land lying in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 3, Twp. 39 S., R. 9 E.W.M., Klamath County, Oregon, described as follows:

Beginning at a point which bears S. 01°14' E. a distance of 55.03 feet and S. 89°14' W. a distance of 580.0 feet from the Quarter Section corner common to Sections 2 and 3, said Township and Range, said point being on the South right-of-way line of South Sixth Street as presently located and constructed; thence continuing S. 89°14' W. along said South right-of-way line a distance of 129.4 feet to the Northwest corner of this description, thence S. 0°18' E. a distance of 137.0 feet to an iron pin; thence N. 89°14' E. a distance of 131.9 feet to an iron pin; thence N. 01°14' W. a distance of 137.0 feet, more or less, to the point of beginning, EXCEPTING a strip of land 8 feet wide running North and South on the West side of said parcel reserved for sidewalk purposes.

SUBJECT TO:

Liens and assessments of Klamath Project and Klamath Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.

Rules, regulations, and assessments of South Suburban Sanitary District.

Provisions in deed from Stephen Sabo, et ux, to State of Oregon, by and through its State Highway Commission, dated May 6, 1942, recorded May 12, 1942, in Deed Volume 147, Page 241, records of Klamath County, Oregon, as follows: "Together with the right, privilege and easement to extend and maintain the slopes of cuts and/or fills for a distance of 10 feet (measured at right angles to the Highway center line) upon the adjacent and abutting property to the grantee, nothing in the paragraph contained shall be construed to convey fee title to the land used for slope purposes, not to prevent grantor from the full use and dominion thereover; provided, however, that such use shall not be permitted to remove and destroy lateral support to the highway right of way."

Easement, including the terms and provisions thereof, executed by Klamath County School District, a corporation, to California Oregon Power Company, a corporation, by deed dated May 8, 1946, recorded June 7, 1946, in Deed Volume 190, Page 337, as corrected by conveyance dated June 10, 1946, recorded June 19, 1946, in Deed Volume 191, Page 98, records of Klamath County, Oregon.

Reservations and restrictions contained in deed from H. R. Waggoner, also known as Robert Waggoner, and Norma E. Waggoner, his wife, W. R. Waggoner and Amy I. Waggoner, his wife, and Raymond Engelcke and Lule Engelcke, his wife, to The United States National Bank of Portland, a national banking association, dated July 27, 1957, recorded August 8, 1957, in Deed Volume 293, Page 435, records of Klamath County, Oregon.

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 Volume 311, Page 36, Deed Records of Klamath County, Oregon.

Lease, including the terms and provisions thereof, executed by Walter B. Waggoner, Harry R. Waggoner and Norma E. Waggoner to Payless Drug Store, Inc., an Oregon corporation, dated May 1, 1968, recorded January 16, 1969, in M69, Page 430, Microfilm records of Klamath County, Oregon.

#### Existing leases and tenancies.

Real Property taxes, together with interest thereon; mortgage, including the terms and provisions thereof, executed by Harry R. Waggoner and Norma E. Waggoner, husband and wife, and Walter B. Waggoner and Donna Marie Waggoner, husband and wife, to First National Bank of Oregon, a national banking association, dated July 7, 1972, recorded July 7, 1972, in Volume M72, Page 7415, Microfilm records of Klamath County, Oregon, given to secure the payment of \$490,000.00; and, mortgage, including the terms and provisions thereof, executed by Harry R. Waggoner and Norma E. Waggoner, husband and wife, and Walter B. Waggoner and Donna Marie Waggoner, husband and wife, to The First National Bank of Oregon, Portland, a national banking association, dated January 7, 1969, recorded January 7, 1969, in Volume M69, Page 175, Microfilm records of Klamath County, Oregon, given to secure the payment of \$1,000,000.00; as to which taxes mortgagor on mortgage does pay at such time as it deems wise or necessary and as to which mortgages mortgagee agrees to make all payments due thereunder and to save and hold mortgagor harmless from and to indemnify mortgagor against any and all damages, costs, or expenses, including attorneys fees incurred by or adjudged against mortgagor by reason of mortgagee failing to comply with the terms and provisions thereof. Mortgagor has the express right to make any payments due or demanded by the mortgage holder thereof which mortgagor deems advisable or necessary to pay. In addition to all other rights mortgagor may have, it may apply any and all amounts so paid to payments next coming due under this mortgage.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Klamath County Title Co.  
this 25th day of October A. D. 1979 at 12:48 P. M., and  
fully recorded in Vol. M79, of Mortgages on Page 25150

Fee \$17.50

Wm D. MILNE, County Clerk  
By Bernetha H. Hulse