

L. 150745

38941 VOL 1468

Assignment of Rents and Profits

THIS INDENTURE, Made this 25th day of February, A.D., 1970,

by Q. & E. CORPORATION, an Oregon corporation

whose Post Office address is 1301 S. Harrison St., Fort Wayne, Indiana, hereinafter referred to as Owner, and accepted by The Lincoln National Life Insurance Company, an Indiana corporation, whose Post Office address is 1301 S. Harrison St., Fort Wayne, Indiana, hereinafter referred to as Company, WITNESSETH: That,

For and in consideration of a mortgage loan from Company in the principal amount of THREE MILLION THREE HUNDRED EIGHTY EIGHT THOUSAND AND NO/100 Dollars (\$3,388,000.00), evidenced by a promissory note and mortgage or deed of trust or other security instrument of even date herewith, and as a part of the consideration for making said mortgage loan, the undersigned, owner of the following described premises, being real estate situated in Klamath County, State of Oregon, encumbered or to be encumbered by said mortgage, to-wit:

PARCEL 1:

All that portion of Tracts 32, 33A and 36 Enterprise Tracts, situated in the Northwest Quarter (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 an iron pipe on the South line of said Tract 32, said point being North 89° 30' 45" West, a distance of 281.8 feet from the southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said beginning point also being on the northwesterly line of Austin Street as deeded to Klamath County by Deed Volume 229 page 300, Klamath County Deed records; thence North 34° 07' 30" East at right angles to South Sixth Street and along the northwesterly line of Austin Street a distance of 183.08 feet to an iron pin on a point on a line that is parallel to and 180 feet distant at right angles from the east line of said Tract 32; thence North 0° 20' 45" East along said parallel line and along the westerly line of Austin Street a distance of 722.70 feet to an iron pin that is South 0° 20' 45" West a distance of 400.02 feet from the iron pin marking the southerly line of Shasta Way; thence North 89° 39' 15" West a distance of 629.67 feet to an iron pin on the southeasterly line of Avalon Street; thence South 30° 37' 00" West along the southeasterly line of Avalon Street a distance of 667.53 feet to an iron pin on the most northerly corner of a tract described as Parcel 3 in Deed Volume 256 page 96, Klamath County Deed Records; thence South 59° 23' 00" East along the northeasterly line of said tract a distance of 149.94 feet to an iron pin; thence South 30° 37' 00" West along the Southeasterly line of said tract a distance of 59.20 feet to an iron pin on the northeasterly line of Pershing Way; thence South 55° 52' 30" East along the northeasterly line of Pershing Way a distance of 485.14 feet to an iron pipe on the southerly projection of the line between Tracts 32 and 36, Enterprise Tracts; thence North 0° 14' 30" West along said projected line a distance of 98.97 feet to an iron pipe on the Southwest corner of said Tract 32; thence South 89° 30' 45" East along the southerly line of said Tract 32 a distance of 362.50 feet to the point of beginning, containing 16.015 acres, more or less.

PARCEL 2:

A parcel of land situated in the Northwest Quarter (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 the northwest corner of said Section 3, said point being marked by a cased iron pin; thence South 0° 00' 30" East along the westerly line of said Section 3 a distance of 826.80 feet to its intersection with a line parallel with and 75.0 feet distant at right angles northeasterly from the centerline of the Klamath Falls-Lakeview Highway, also known as South Sixth Street, as the same is now located and constructed; thence South 55° 52' 30" East, along said parallel line a distance of 1682.84 feet to an iron pin on the northwesterly line of Austin Street; thence North 34° 07' 30" East along said line a distance of 235.00 feet to an iron pin on the northeasterly line of Pershing Way, said point being the True Point of Beginning of this description; thence North 34° 07' 30" East along the Northwesterly line of Austin Street a distance of 282.50 feet to an iron pipe on the southerly line of Tract 32, Enterprise Tracts, said point being North 89° 30' 45" West a distance of 281.8 feet from the southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said point being on the northwesterly line of that tract deeded to Klamath County by Deed Volume 229 page 300, Klamath County Deed Records; thence North 89° 30' 45" West along the southerly line of said Tract 32 a distance of 362.50 feet to an iron pipe on the southwest corner of said Tract 32; thence South 0° 14' 30" East along the southerly projection of the line between Tracts 32 and 36, Enterprise Tracts, a distance of 98.97 feet to an iron pipe on the northeasterly line of Pershing Way; thence South 55° 52' 30" East along said line a distance of 245.93 feet to the True Point of Beginning of this description, containing 1.209 acres, more or less.

Northwest corner of said Section 3, said point being marked by a cased iron pipe on the southerly line of Tract 32, Enterprise Tracts, said point being North 89° 30' 45" West a distance of 281.8 feet from the southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said point being on the northwesterly line of that tract deeded to Klamath County by Deed Volume 229 page 300, Klamath County Deed Records; thence North 89° 30' 45" West along the southerly line of said Tract 32 a distance of 362.50 feet to an iron pipe on the southwest corner of said Tract 32; thence South 0° 14' 30" East along the southerly projection of the line between Tracts 32 and 36, Enterprise Tracts, a distance of 98.97 feet to an iron pipe on the northeasterly line of Pershing Way; thence South 55° 52' 30" East along said line a distance of 245.93 feet to the True Point of Beginning of this description, containing 1.209 acres, more or less.

PARCEL 3:

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Beginning at the iron pipe marking the Southeast corner of Enterprise Tract 32 in Section 3 Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, and running thence West along the South line of Tract 32 a distance of 209.57 feet, more or less, to an iron pipe marking the Easterly line of Austin Street; thence North 34° 07' 1/2" East along the Easterly line of Austin Street Northeasterly at right angles to the center line of South Sixth Street a distance of 161.08 feet, more or less, to an iron rod which lies on a line which is parallel to and 120 feet Westerly at right angles from the East line of Tract 32; thence North 0° 20' 45" East along said parallel line and the East line of Austin Street 391.3 feet, to the true point of beginning, said point of beginning being 823.0 feet South of the North line of Section 3, thence North 0° 20' 45" East along said parallel line and the East line of Austin Street 500.0 feet, more or less, to a point which marks the Southwest corner of parcel of land conveyed by Swan Lake Moulding Company to William L. Wales, Jr., thence leaving the Easterly boundary of Austin Street (North 89° 50' 30" East parallel to and 323 feet distant at right angles from the North line of Section 3 a distance of 120.0 feet to an iron rod marking the Southeast corner of said Wales parcel, on the East line of Tract 32; thence South 0° 20' 45" West along the East line of Tract 32, 500.0 feet to a point, said point being 823.0 feet South of the North line of Section 3; thence South 89° 50' 30" West on a line parallel to the North line of Section 3, a distance of 120.0 feet to the point of beginning. Said parcel contains 60,000 square feet, more or less.

TOGETHER WITH AND SUBJECT TO that certain Cross Easement Agreement dated July 30, 1965, by and between Oregon Shopping Center, Inc., an Oregon corporation, and Erickson Investment Co., a California corporation, recorded March 30, 1966, in Microfilm record as Document No. 5080, Volume M66, Page 2768 Records of Klamath County, Oregon, covering the following described real estate:

All that portion of Tracts 32 and 36, Enterprise Tracts, situated in the Northwest Quarter (NW 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 the southeast corner of said Tract 32; thence North 89° 30' 45" West a distance of 281.8 feet (West 281.7 feet by previous records) to an iron pipe on the Northwesterly line of Austin Street as deeded to Klamath County by Deed Volume 229, Page 300, Klamath County Deed Records; thence North 34° 07' 30" East at right angles to South Sixth Street and along the Northwesterly line of Austin Street a distance of 183.08 feet to an iron pin on a point on a line that is parallel to and 180 feet distant at right angles from the east line of said Tract 32; thence North 0° 20' 45" East along said parallel line and along the westerly line of Austin Street a distance of 722.70 feet to an iron pin being the True Point of Beginning of this description; said point being South 0° 20' 45" West a distance of 400.02 feet from the iron pin marking the southerly line of Shasta Way; thence North 89° 39' 15" West a distance of 629.67 feet to an iron pin on the southeasterly line of Avalon Street; thence North 30° 37' East along the southeasterly line of Avalon Street a distance of 284.57 feet to an iron pipe; thence North 89° 56' East a distance of 110.32 feet to an iron pipe; thence North 0° 07' 30" West a distance of 150.11 feet to an iron pipe on the southerly line of Shasta Way; thence North 89° 50' 30" East along the southerly line of Shasta Way a distance of 377.21 feet to an iron pin on the west line of Austin Street; thence South 0° 20' 45" West along the west line of Austin Street a distance of 400.02 feet to the True Point of Beginning of this description.

The bearing of the above described tract of land is based on South Sixth Street bearing being North 55° 52' 30" West from the intersection of Austin Street. The above described tract of land contains 4.468 acres, more or less.

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(together with all improvements thereon and appurtenances thereto) does hereby sell, assign and transfer to Company, its successors and assigns, all the rents, issues and profits due or to become due on and from the said premises, and does hereby transfer, assign and set over unto Company, its successors and assigns, all leases, tenancies and contracts, oral and written, now or hereafter existing, in connection with said premises. Company is hereby given full power and authority to operate, maintain, manage and lease said premises, or any part thereof, to take possession thereof in its own name, or in the name of an agent, or in the name of Owner, collect all of the rents, issues and profits, and apply any sums realized as hereinafter set out. Owner expressly authorizes tenants, lessees, and all others having any interest in the said premises to pay to Company or order all sums due, or to become due, under leases, contracts and agreements, heretofore or hereafter made, and Company is hereby authorized to give, for and in behalf of Owner, full receipt and acquittance for any payment so made.

Company is further authorized, but shall not be obligated, to pay taxes, assessments and charges on the premises, to insure, repair, and/or improve the buildings located thereon, and to expend such sums as may be necessary to defend the title, or the property, or the use thereof, or to recover rents and profits, or to protect rental rights, and/or to make such other expenditures for said property as it may in its sole discretion deem necessary, proper, or expedient. Company may, but shall not be obligated, to advance funds for any of the above purposes, and any amount so advanced shall be a first and prior claim on the rents and profits realized from the said property, and shall be repaid to Company before any distribution as hereinafter set out. Should the rents and profits be insufficient to pay advances so made by Company, any unpaid balance shall become a part of the debt secured by the said mortgage and shall bear interest from date of advancement at the maximum rate set out in said mortgage for interest on advances; and in the event such advancements are made after the mortgage debt has been reduced to judgment, Owner shall pay such advancements with interest to Company in addition to any amount necessary to pay and satisfy the judgment, interest and costs or to redeem the property from foreclosure sale. Company shall be entitled to retain possession of the property until such advancements and interest are fully paid.

It is further agreed that Company shall be required to account for only such rentals and payments as are actually collected by it. Nothing herein contained shall be deemed to create any liability on the part of Company for failure to rent the premises or any part thereof, or for failure to make collections of rentals, or for failure to do any of the things which are authorized herein. This instrument is a grant of rights and privileges to Company and shall not be held to create any duties or liabilities except as herein expressly set out. For the purpose of accounting the books and records of Company shall be deemed prima facie correct.

It is further understood and agreed that Company shall in the exercise of its control and management of the premises be deemed the agent of Owner and shall not be liable for any damage to any person or property, where such damage arises out of the operation of, or in connection with the said premises.

It is further understood and agreed that the acceptance by Company of any payment or performance under any lease or other contract with reference to the said premises, from any tenant or other person, shall not bar nor abridge any of the rights of Company under its mortgage, against such tenant or person.

This contract shall remain in full force and effect so long as the indebtedness secured by the above described mortgage or any extension or renewal thereof remains unpaid and, in the event of foreclosure, during any period of redemption and until the recording of the deed issued under such foreclosure proceedings and until delivery of actual and complete possession of the premises to the grantee in such deed. This agreement shall not affect Owner's right to redeem from foreclosure sale; but such redemption shall not terminate this agreement unless and until said mortgage debt or any judgment rendered thereon plus interest, costs and expenses and any advancements made by Company, with interest as above mentioned, have been fully paid it. In the event of termination of this agreement Owner shall approve and accept any and all outstanding leases made by Company or its agent; but only to the extent of a period of one year from date of termination of this agreement.

The provisions of this agreement are a covenant running with the land herein described and shall bind all persons hereafter acquiring any interest in the said premises; and it is expressly agreed that the within assignment and grant of rights and powers is coupled with an interest.

Any amount received or collected by Company by virtue of this agreement shall be applied as follows (but not necessarily in the order stated) the priority of payment of such items to be within the sole discretion of Company:

1. To the repayment to Company of any and all amounts advanced by it under the terms of this agreement, together with interest on the respective advancements from the date of each at the maximum rate set out in the aforesaid mortgage for interest on advances.
2. To the payment of taxes, assessments and charges and the expense of insurance, repairs to and improvements on the property; but Company shall not be obligated to keep insurance on, make repairs to and/or improvements on the property.
3. To the payment of all other necessary expenses of the management, protection and/or preservation of the property.
4. To the payment of all amounts due or to become due under the said mortgage or any extension or renewal thereof and/or to the payment of any judgment rendered thereon together with interest, costs and expenses.
5. The surplus, if any, after full payment of the above, shall be paid to the then Owner of record of the said premises.

It is understood that this agreement is but an additional security for the payment of said mortgage debt, and shall not be deemed to be payment thereof except as to money actually received by Company as and when applied as such payment; nor shall this agreement be deemed a waiver of any default occurring hereafter in the full performance of the conditions of the said mortgage; nor shall the application of any money received by Company under this agreement towards curing such default in any manner waive such default or prevent foreclosure because of the same, Company hereby expressly reserving all its rights and privileges under the said mortgage as fully as though this agreement had not been entered into.

Company shall not be liable for any act or failure to act under the terms of this agreement, except for willful misconduct or gross negligence, nor shall Company be liable for the act or omission of any agent, if Company shall have used reasonable care in the selection of such agent.

Notwithstanding that this instrument is a present and executed assignment of the rents, issues and profits and a present and executed grant of the powers hereinbefore granted to Company, it is understood and agreed that until default occurs in the performance of the terms and conditions of the said mortgage or the note secured thereby and Company elects to collect such rents, issues and profits or to manage the mortgaged property, Owner is to be permitted, at the sufferance of Company, to collect and retain said rents, issues and profits; provided, however, that in no event shall Owner have authority to collect any rents, issues or profits for more than forty-five days in advance; and, provided further, that if a petition in bankruptcy is filed by or against Owner, or if any proceeding is instituted for the reorganization of Owner or the adjustment of the obligations of Owner, or if Owner makes any assignment for the benefit of creditors, or if an application for a Receiver is filed against Owner which will or may affect the said real estate, then, upon the happening of any one or more of such events, Company shall have the immediate and automatic right to the management and control of the said real estate and improvements and to collect the rents, issues and profits, to the full extent of all rights given it under this agreement, even though there be no existing default on the part of Owner.

Nothing herein contained shall affect or apply to any lease which is assigned by Owner to Company by separate instrument.

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This agreement shall not be terminated, except as herein provided, nor shall it be altered, modified or amended, except by written agreement. References herein to "mortgage" shall be read to include a deed of trust, security deed or any other form of security instrument.

This agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Whenever used herein the singular number

Nothing herein contained shall affect or apply to any lease which is assigned by Owner to Company by separate instrument.

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This agreement shall not be terminated, except as herein provided, nor shall it be altered, modified or amended, except by written agreement. References herein to "mortgage" shall be read to include a deed of trust, security deed or any other form of security instrument.

This agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Whenever used herein the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

O. & E. CORPORATION

BY: [Signature] President
Attest: [Signature] Secretary

Accepted By: THE LINCOLN NATIONAL LIFE INSURANCE COMPANY

By: [Signature] SENIOR Vice President

STATE OF Oregon }
COUNTY OF Klamath } SS:

On this 25th day of February, 1970, before me, a Notary Public in and for said County and State, appeared V. H. Otte and Alex Jokay, both to me personally known, who being duly sworn did say that the said V. H. Otte is the President, and he, the said Alex Jokay is the Secretary of O. & E. CORPORATION, an Oregon corporation, the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said V. H. Otte and Alex Jokay acknowledged said instrument to be the free act and deed of said corporation.

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

[Signature]
Notary Public in and for the State of Oregon
Residing at: Klamath Falls
My commission expires: January 9, 1973

This instrument was prepared by Donald F. Butler, Assistant Counsel, for The Lincoln National Life Insurance Company, Fort Wayne, Indiana.

eh

Return
KLAMATH COUNTY TITLE CO.

Form 2280-8-63

STATE OF OREGON, }
County of Klamath } ss.

Filed for record at request of:
Klamath County Title Co.
on this 25th day of February A. D. 1970
at 9:52 o'clock A. M. and duly
recorded in Vol. M-70 of Mortgages
Page 1468

WM. D. MILNE, County Clerk
By [Signature] Deputy.
Fee \$7.50