

13378

Vol. 188 Page 3622

MORTGAGE

* * * *

THIS MORTGAGE entered into this 8 day of July, 1982, by and between EDWARD T. McCLURE and RICHARD E. OTOSKI, a co-partnership, hereinafter referred to as Mortgagor and WILLIAM A. BARTLETT, M. D., P. C. PENSION PLAN, hereinafter referred to as Mortgagee.

The parties agree as follows:

SECTION 1. CONVEYANCE.

For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the following described real property situated in the County of Klamath, State of Oregon:

Lot 18 in Block 3, Resubdivision of a portion of McLOUGHLIN HEIGHTS ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

SECTION 2. PURPOSE.

This conveyance is intended as a Mortgage to secure the performance of the covenants and agreements herein contained and contained in any loan agreement, security agreement or other agreement between Mortgagor and Mortgagee and to secure payment of a loan in the sum of THIRTY-ONE THOUSAND TWO HUNDRED SIXTY-EIGHT and 92/100ths DOLLARS, evidenced by the following described Promissory Note from Mortgagor to Mortgagee:

PROMISSORY NOTE
* * * * *

\$31,268.92

Klamath Falls, Oregon July 8, 1982

WE, jointly and severally, promise to pay to the order of WILLIAM A. BARTLETT, M. D., P. C. PENSION PLAN, at Klamath Falls, Oregon, the sum of THIRTY-ONE THOUSAND TWO HUNDRED SIXTY-EIGHT and 92/100ths DOLLARS (\$31,268.92), together with interest at the rate of 12% per annum from date until paid, payable in annual installments, in the dates and amounts as follows: The sum of \$12,924.49, including interest at the rate of 12% per annum due and payable on the 8 day of July, 1983, a like payment of \$12,924.49, including interest at the rate of 12% per annum due and payable on the 8 day of July, 1984 and the entire remaining balance of principal and interest shall be paid in full on the 8 day of July, 1985. If any of said installments is not so paid, all principal and interest shall immediately become due and collectible, at the option of the holder of this Note.

The entire remaining principal and interest of the said Promissory Note may be paid at any time, paying the interest only to the date of payment.

If this Note is placed in the hands of an attorney for collection, we promise to pay the reasonable attorneys' fees and collection costs of the holder hereof, and if suit or action is filed hereon, also promise to pay (1) holder's reasonable attorneys

fees to be fixed by the trial court and (2) if any appeal is taken from any decision of the trial court, such further sum as may be fixed by the appellate court, as the holder's reasonable attorneys fees in the appellate court.

/s/ Edward T. McClure
EDWARD T. MCCLURE

/s/ Richard E. Otoski
RICHARD E. OTOSKI

A Co-Partnership

SECTION 3 WARRANTY OF TITLE.

At the time of execution and delivery of this Mortgage, Mortgagor is the owner of the mortgaged premises in fee simple, Mortgagor has the right and authority to mortgage the mortgaged premises as provided in this Mortgage, and the mortgaged premises are free and clear of liens and encumbrances, except (1) reservations, restrictions, rights of way, easements of record and those apparent on the land and (2) a City Lien, due to the City of Klamath Falls, Oregon, docketed on April 25, 1980, Improvement Unit: 278, Card 2, Original amount: \$10,355.71. Mortgagor will defend Mortgagee's rights against any liens and encumbrances, other than those listed in this Mortgage. All covenants and provisions of this Mortgage shall bind the successors and assigns of Mortgagor and shall inure to the benefit of the successors and assigns of Mortgagee.

SECTION 4 PAYMENT AND PERFORMANCE.

Mortgagor will pay, when due, the indebtedness secured by this Mortgage in accordance with the terms thereof. Mortgagor will strictly perform all obligations of this Mortgage and of any loan agreement or security agreement executed in connection with the indebtedness secured by this Mortgage. Mortgagor will promptly comply with all existing or future laws, orders and regulations of all state, federal, municipal and local governments or any similar bodies affecting the mortgaged premises or their use.

SECTION 5 CHARGES AGAINST MORTGAGED PREMISES.

5.1 TAXES AND UTILITIES. Mortgagor will pay when due all taxes, assessments, water and other charges for utility services that may be levied, assessed or charged upon or against the mortgaged premises, or any part thereof. Upon request, Mortgagor shall deliver to Mortgagee evidence of payment of the taxes, assessments or other charges.

5.2 LIENS AND ENCUMBRANCES. Mortgagor will promptly pay and satisfy any construction liens or other encumbrances that might by operation of law or otherwise become a lien upon the mortgaged premises, whether or not superior to the lien of this Mortgage. Mortgagor may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as Mortgagee's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Mortgagor shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien, or deposit with Mortgagee cash or a sufficient corporate surety bond or other security satisfactory to Mortgagee in an

amount sufficient to discharge the lien plus any costs, attorneys fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

5.3 INSURANCE AND OTHER CHARGES. Mortgagor will pay, when required, all premiums upon insurance policies on the mortgaged property, all licenses and fees legally owing by it, and all rentals and other charges for the use of any leased ground or premises upon which any of the mortgaged premises may be located.

5.4 FAILURE TO PAY. In case of default in payment of any charges, Mortgagor is required to pay pursuant to this Mortgage, Mortgagee, its successors and assigns, may at its option pay any insurance premiums, or reinsure the mortgaged premises and pay all premiums therefor; and pay licenses, fees, rentals, charges, taxes and/or assessments due or claimed to be due under any legislative power or authority or under any valid contract; and any amounts so paid by Mortgagee shall become part of the principal debt; and amounts so paid by Mortgagee shall bear interest at the rate of 12% from the date of payment.

SECTION 6. CONDITION OF MORTGAGED PREMISES.

6.1 REPAIRS AND MAINTENANCE. Mortgagor will keep all improvements, which may be hereafter erected on the mortgaged premises, in good order and repair.

6.2 FIRST-CLASS CONDITION. Mortgagor will maintain the mortgaged premises in first-class condition.

6.3 WASTE. Mortgagor will not permit waste of the mortgaged premises or do or suffer anything to be done to depreciate or impair the value of the mortgaged premises during the life of this Mortgage.

6.4 CHANGES AND ALTERATIONS. Mortgagor will not make any changes or alterations to the improvements, to be erected, upon the mortgaged premises which will materially decrease the value of the same. Before making any changes in or alterations to the improvements, Mortgagor shall give notice to Mortgagee of the nature and extent of the changes or alterations and shall provide evidence of Mortgagor's ability to finance the changes or alterations.

6.5 REMOVAL OF IMPROVEMENTS PROHIBITED. Mortgagor will not remove or permit to be removed any improvements from the mortgaged premises, without the prior written consent of Mortgagee.

6.6 RIGHT OF INSPECTION. Mortgagee shall have the right to enter upon the mortgaged premises at all reasonable times to determine Mortgagor's compliance with this Mortgage.

SECTION 7. INSURANCE.

7.1 INSURANCE REQUIRED. Mortgagor will keep the building improvements, which may hereafter be erected, on the mortgaged premises insured against loss or damage by fire with extended coverage endorsement, written by a responsible insurance company or insurance companies satisfactory to Mortgagee in an amount satisfactory to Mortgagee, naming Mortgagor and Mortgagee, insured parties, as their interests may appear, and will cause to be executed and attached to all policies of insurance issued thereon

a clause in form satisfactory to Mortgagee, making loss payable to Mortgagee as its interest may appear. The policy or policies of insurance shall be delivered to Mortgagee and shall contain a provision requiring at least ten (10) days' notice to Mortgagee before cancellation. Mortgagor agrees to notify Mortgagee of any casualty affecting the mortgaged premises.

7.2 DISPOSITION OF INSURANCE PROCEEDS. Any insurance funds paid to Mortgagee as result of damage or loss to the mortgaged premises covered may, at the option of Mortgagee, be released to Mortgagor to be expended in the repair, restoration or replacement of the mortgaged premises so damaged or lost, or be retained by Mortgagee and be applied toward the payment of all or such of the items of indebtedness secured as Mortgagee may elect. Mortgagor hereby appoints Mortgagee agent to collect all amounts payable under the policies to Mortgagor, and amounts retained by Mortgagee, after the cost of collection, shall be applied to the payment of the principal sum and interest thereon, and other sums secured by this Mortgage.

SECTION 8. ASSIGNMENT OF ISSUES AND PROFITS.

Mortgagor hereby assigns and transfers to Mortgagee the issues and profits, together with full power and authority to demand, sue for and collect the same in the name of the Mortgagor, or in its own name, and to take possession of and manage the mortgaged premises or to cause a receiver to be appointed for such purpose and apply the income therefrom, after the costs of collection and management, to the reduction of the indebtedness secured hereby. However, the right to collection and management shall not apply as long as this Mortgage is in good standing.

SECTION 9. TAX ON MORTGAGES OR MORTGAGEES. If any tax is levied by any governmental authority on account of this Mortgage, whether imposed on Mortgagee or Mortgagor, Mortgagor agrees to pay such tax with and in addition to the monthly payments of principal and interest and any other amounts payable by Mortgagor, or to pay the entire unpaid balance of principal and accrued interest secured by this Mortgage.

SECTION 10. DEFAULT.

10.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute a default hereunder:

- (A) Mortgagor's default in the timely payment of any indebtedness to Mortgagee when due;
- (B) Mortgagor's failure to perform or observe all the provisions of this Mortgage;
- (C) The happening of an event of default under any other agreement or security instrument between Mortgagor or Mortgagee;
- (D) Mortgagor's insolvency or inability to pay its debts as they mature or Mortgagor's assignment for the benefit of creditors or filing of a voluntary petition in bankruptcy, or a voluntary petition seeking reorganization, or effecting a plan or other arrangement with creditors, or filing an answer consenting to or taking any other action indicating acquiescence in any involuntary petition pursuant to, or purporting to be pursuant

to, any bankruptcy, reorganization or insolvency laws of any jurisdiction, or adjudication of Mortgagor as bankrupt or insolvent by any court of competent jurisdiction or appointment of a receiver for any substantial portion of Mortgagor's property.

10.2 REMEDIES ON DEFAULT. If any default occurs, Mortgagee may, at its option, declare the entire unpaid balance of principal and accrued interest secured by this Mortgage, immediately due and foreclosure proceedings may be immediately commenced. The failure of Mortgagee to exercise any option given hereunder shall not be taken or deemed a waiver of its right to exercise its option as to any past or subsequent violation of any covenants or stipulations.

SECTION 11 ATTORNEYS FEES AND OTHER COSTS.

In the event suit or action is begun to foreclose this Mortgage, Mortgagor will pay, in addition to the costs and disbursements allowed by law, such sum as the court may adjudge reasonable attorneys fees in such suit or action, or any appeal therefrom. Mortgagor will also pay such sum as the Court may adjudge reasonable for the necessary examination and search of the public records respecting the title to the mortgaged premises. The plaintiff in such suit or action may take judgment therein for such sums. Mortgagor will pay to Mortgagee all sums, including costs, expenses and reasonable agent and attorney fees, which Mortgagee may expend or become obligated for in any proceedings, legal or otherwise, involving the title to the mortgaged premises, or to establish, protect or sustain the lien of this Mortgage, or its priority, or in defending against liens, claims, rights, estates, easements or restrictions, or for evidences of title to the mortgaged premises. Interest shall be paid to Mortgagee on all such sums at the rate then payable on the indebtedness secured hereby. This Mortgage shall stand as security for payment of these sums and interest in like manner and effect as for payment of the indebtedness secured.

SECTION 12. CONDEMNATION.

If the mortgaged premises, or any part thereof, are condemned under any power of eminent domain or acquired for public use, the damages, proceeds and the consideration for such acquisition, to the extent of the full amount of the indebtedness secured by this Mortgage, including any expenses and attorneys fees incurred by Mortgagee on account of such condemnation, are hereby assigned by Mortgagor to Mortgagee and shall be paid forthwith to Mortgagee to be applied by it to the payment of such expenses and attorney fees and any balance on account of the last maturing portion of the indebtedness secured hereby.

SECTION 13. SPECIFIC CONDITION.

It is specifically understood that Mortgagors are also purchasing an adjacent parcel of real property from WILLIAM A. BARTLETT and CATHERINE BARTLETT, husband and wife. Mortgagor agrees to abide by the terms and conditions of the Mortgage, on said adjacent parcel, securing the payment of their obligation to WILLIAM A. BARTLETT and CATHERINE BARTLETT, husband and wife, said Mortgage being recorded in Volume M82, page 8614, on the 8 day of July, 1982. If Mortgagor defaults on any provision of said Mortgage the default shall be considered a default under

this Mortgage.

SECTION 14. SUBORDINATION.

It is specifically understood that Mortgagor may construct a building on the above-described premises. In the event that Mortgagor secures financing to construct said building, Mortgagee agrees to subordinate this Mortgage to a new mortgage securing Mortgagor's promissory note for said financing.

SECTION 15. MISCELLANEOUS.

15.1 TERMINOLOGY. 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.

15.2 NONWAIVER. No condition of this Mortgage shall be deemed waived unless expressly waived in writing by Mortgagee.

15.3 NOTICES. Whenever any notice, demand or request is required by the terms of this Mortgage or by any law now in existence or hereafter enacted, the notice, demand or request shall be sufficient if enclosed in a postage prepaid envelope addressed to Mortgagor at the last address actually furnished to Mortgagee, or at the mortgaged premises, and deposited in any post office, station or letter box.

15.4 TRANSFER. Mortgagor shall have the right to transfer the Mortgaged premises at any time, with or without Mortgagee's consent.

15.5 TIME OF ESSENCE. Time is of the essence of this Mortgage.

15.6 APPLICABLE LAW. This Mortgage shall be governed by the laws of the state of Oregon, and any question arising hereunder shall be construed or determined according to such law.

The parties have executed this Mortgage as of the date first above written.

Edward T. McClure
EDWARD T. MCCLURE

Richard E. Otoski
RICHARD E. OTOSKI

STATE OF OREGON)
) ss.
County of Klamath)

Personally appeared EDWARD T. MCCLURE and RICHARD E. OTOSKI, a co-partnership, and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME:

AFTER RECORDING RETURN TO:
Mountain Title Company
403 Main Street

Sharon Kay Wiley
Sharon Kay Wiley
Notary Public for Oregon
My commission expires 6/4/1985

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON: COUNTY OF KLAMATH :ss
I hereby certify that the within instrument was received and filed for record on the 8 day of July A.D., 1982 at 4:31 o'clock p M,
and duly recorded in Vol M 82, of Mtge on page 8622

EVELYN BIEHN COUNTY CLERK
by *Joyce Mc* Deputy

24.00
Fee \$ _____