

FORBANK  
USE ONLYVol. M8 Page 1459  
**ASSIGNMENT OF  
SELLER'S INTEREST IN  
LAND SALE CONTRACT**

**16871**  
Borrower: Garter Enterprises, Inc. Bank: Mid Valley Bank *pet*  
P.O. Box 271 P.O. BOX "X"  
Omak, Wash. 98841 Omak, Wash. 98841

On January 11, 1979, Borrower entered into a land sale contract (the Contract) in which Borrower is the Seller and  
W. C. Castle whose address is  
Rt. 5, Box 1022, Klamath Falls, Oregon

is the Buyer (the Buyer). The Contract was recorded on May 4, 19 79, in the records of  
Klamath County, State of Oregon, in Book (or File No.) M79 at Page 10410.

This Seller's Assignment has been given as collateral for a loan and therefor has the status of a mortgage and no Revenue Stamps are necessary. The Contract is for the sale of the following property:

The Red Garter Tavern, 2636 Biehn Street, Klamath Falls, Oregon legally described as:

That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20, Township 38 South, Range 9 E.W.M., described as follows: Beginning at a point 1280 feet East and 1080 feet North from the section corner common to Sections 19, 20, 29 and 30, Township 38 South, Range 9, E.W.M., and running thence North 261.7 feet; thence West 271 feet; thence South 261.7 feet; thence East 271 feet to the place of beginning; being all of vacated Blocks 3 and 4 of Highway Addition to the City of Klamath Falls, Oregon, and portions of streets adjacent thereto.

22  
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together with all existing or subsequently erected or affixed improvements or fixtures, all rents, revenues, income, issues, and profits therefrom, all equipment, furnishings, and other articles of personal property now or subsequently located on or used in connection therewith, and all additions, substitutions, and replacements of any of the foregoing. All of the foregoing is collectively referred to as the Property.

As security for all amounts due Bank from Borrower now or later, Borrower assigns to Bank all of Borrower's right, title, and interest in or to the Contract; together with all of Borrower's right, title, and interest in or to the property.

This assignment secures all indebtedness of Borrower to Bank, whether now or existing or arising at a later time. The word "indebtedness" is used in its most comprehensive sense and includes, but is not limited to, any and all advances, debts, obligations, and liabilities of Borrower, or any one or more of them, including judgments against Borrower, heretofore, now, or hereafter made, incurred, or created, whether voluntarily or involuntarily and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Borrower may be liable individually or jointly with others, or primarily or secondarily, as guarantor, and whether recovery upon such indebtedness may be or hereafter may become barred by any statute of limitations, and whether such indebtedness may be or hereafter may become otherwise unenforceable, and whether such indebtedness arises from transactions which may be voidable on account of infancy, insanity, ultra vires, or otherwise.

This assignment is made and accepted under the following terms.

1. **Collections of Revenue, Actions by Borrower and Bank.**

1.1 Borrower shall pay to Bank promptly when due all Indebtedness and shall perform strictly all obligations imposed upon Borrower by this assignment.

1.2 Bank may notify Buyer of this assignment, at Bank's sole discretion and with no further permission from Borrower. Bank may collect all amounts of any nature due or to become due under the Contract directly from Buyer and apply such sums to the Indebtedness, at Bank's sole discretion, with no further permission from Borrower, and whether or not Borrower is in default under the terms of this assignment or under the terms of any Indebtedness.

1.3 Bank shall not have any responsibility with respect to the Contract or the Property. Borrower agrees to protect and preserve all rights granted Borrower under the Contract for the benefit of both Bank and Borrower, and to comply with all obligations of Borrower as vendor under the Contract. Bank may, at Bank's sole option and with no further permission from Borrower, take such steps as Bank deems appropriate to protect or preserve the rights of Borrower or Bank in the Contract or the Property, to protect or preserve the Property, or to take any other action permitted under the Contract. Bank may do so in its own name or in the name of Borrower, and Borrower hereby appoints Bank as Borrower's irrevocable attorney in fact for that purpose.

1.4 Borrower represents to Bank that the Contract is not in default and that the Contract has an unpaid principal balance of not less than \$ 92,388.56. Payments under the Contract have been made on the 1st day of June ~~day~~ of each Year.

1.5 Borrower has delivered to Bank the original of the Contract, which Bank may retain in Bank's possession.

1.6 In some instances below, Borrower agrees to impose certain requirements upon Buyer, pursuant to Borrower's capacity as seller under the Contract. If Buyer does not meet these requirements, Borrower agrees to do so. However, nothing in this assignment shall require Borrower to take any action beyond the rights granted Borrower under the Contract or under applicable law.

T.M.P.

## 2. Maintenance of the Property

- 2.1 Borrower shall require that the Property be maintained by Buyer in first class condition and that all repairs and maintenance necessary to preserve its value be performed promptly.
- 2.2 Borrower shall neither conduct or permit any nuisance nor commit or suffer any strip or waste on the Property.
- 2.3 Borrower shall not demolish or remove or permit the demolition or removal of any improvements from the Property without the prior written consent of Bank. Consent will not be withheld if Borrower or Buyer makes arrangements satisfactory to Bank to replace any improvement which Borrower or Buyer proposes to remove with one of at least equal value. "Improvements" shall include all existing and future buildings, structures, and parking facilities.
- 2.4 Bank and its agents and representatives may enter upon the Property, to the same extent Borrower may do so, at all reasonable times to attend to Bank's interest and to inspect the Property.
- 2.5 Borrower shall require Buyer to comply promptly with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Property. Borrower or Buyer may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Bank's interest in the Property is not jeopardized.
- 2.6 Borrower shall do or require Buyer to do all other acts that from the character and use of the Property are reasonably necessary to protect and preserve the Property, the specific enumerations as set forth in this section not excluding the general.

## 3. Taxes and Liens

- 3.1 Borrower shall pay, or require Buyer to pay, all taxes and assessments levied against or on account of the Property, when due, and pay when due all claims for work done on or for services rendered or material furnished to the Property. Borrower shall maintain, or require Buyer to maintain, the Property free of any liens having priority over or equal to the interest of Bank under this assignment, except for the lien of taxes and assessments not due, except for any prior indebtedness referred to in Section 10, and except as otherwise provided in Subsection 3.2.
- 3.2 Borrower or Buyer may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Bank's interest in the Property and the Contract is not jeopardized. If a lien arises or is filed as a result of nonpayment, Borrower or Buyer shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Borrower or Buyer has notice of the filing, secure the discharge of the lien or deposit with Bank cash or a sufficient corporate surety bond or other security satisfactory to Bank in an amount sufficient to discharge the lien plus any costs, attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien.
- 3.3 Borrower shall upon demand furnish to Bank evidence of payment of the taxes or assessments and shall authorize the appropriate county official to deliver to Bank at any time a written statement of the taxes and assessments against the Property.

## 4. Insurance

- 4.1 Borrower, either alone or in conjunction with Buyer, shall procure and maintain policies of fire insurance with standard extended coverage endorsements on an actual cash value basis covering all improvements on the Property, in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Bank. Policies shall be written by insurance companies reasonably acceptable to Bank. Borrower shall deliver to Bank certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of 10 days' written notice to Bank.
- 4.2 Borrower shall promptly notify Bank of any loss or damage to the Property. Bank may make proof of loss if it is not done within 15 days of the casualty. All proceeds of any insurance on the Property shall be held by Bank to the extent permitted Borrower under the terms of the Contract.

## 5. Expenditure by Bank.

If Borrower fails to comply with any provision of this assignment, including the obligation to maintain all prior liens permitted under Section 10 in good standing, Bank may at its option on Borrower's behalf take the required action. Any amount that Bank expends in so doing shall be added to the Indebtedness. Amounts so added shall be payable on demand with interest from the date of expenditure at the same rate as the Indebtedness. The rights provided for in this section shall be in addition to any other rights or remedies to which Bank may be entitled on account of the default, and Bank shall not by taking the required action cure the default so as to bar Bank from any remedy that Bank otherwise would have had.

## 6. Warranty; Defense of Title

- 6.1 Borrower warrants that it holds merchantable title to the Property in fee simple free of all encumbrances other than the Contract, in which Borrower warrants that Borrower is the seller, and (a) the exceptions listed in the ☐ title ☐ lot book report issued by \_\_\_\_\_ on \_\_\_\_\_;
- (b) \_\_\_\_\_;
- 6.2 Subject to the exceptions in the paragraph above, Grantor warrants and will forever defend the title against the claims of all persons. If any action or proceeding is commenced that questions Borrower's title or the interest of Bank under this assignment, Borrower shall defend the action at Borrower's expense.

## 7. Condemnation

- 7.1 If all or any part of the Property is condemned, Bank may at its election require that all or any portion of the net proceeds of the award payable to Borrower be applied on the Indebtedness. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees necessarily paid or incurred by Borrower, Buyer, and Bank in connection with the condemnation.
- 7.2 If any proceedings in condemnation are filed, Borrower shall promptly take such steps as may be necessary to defend the action and obtain the award.

## 8. Transfer by Buyer.

- 8.1 Borrower shall not permit Buyer to transfer or agree to transfer Buyer's interest in the Property without the prior written consent of Bank, which consent shall be subject to the same terms and conditions to which Borrower and Buyer have agreed under the provisions of the Contract concerning transfer of the Property. If Borrower, Buyer, or a prospective transferee applies to Bank for consent to such a transaction, Bank may require such information concerning the transferee as would normally be required from a new loan applicant.
- 8.2 Consent by Bank to one transfer shall not constitute a consent to other transfers or a waiver of this section. No transfer by Buyer shall relieve Borrower of liability for payment of the Indebtedness. Following a transfer, Bank may agree to any extension of time for payment or modification of the terms of the Contract or waive any right or remedy under this assignment without relieving Borrower from liability. Borrower waives notice, presentment, and protest with respect to the Indebtedness.

- 8.3 Borrower shall have no right to transfer Borrower's interest in the Contract or the Property without the prior written consent of Bank.

## 9. Security Agreement, Financing Statements

- 9.1 The parties intend that the Borrower's interest in the Contract constitutes personal property. This assignment shall constitute a security agreement with respect to the Contract, to the extent that the Contract (or any rights thereunder) constitutes personal property. Bank shall have all the rights of a secured party under the Uniform Commercial Code in effect in the state in which the Property is located in addition to all other rights of Bank under applicable law.
- 9.2 Borrower shall join with Bank in executing one or more financing statements under the Uniform Commercial Code, which Bank may file at Borrower's expense in all public offices where filing is required to perfect the security interest of Bank in the Contract. Bank may file copies of this assignment as a financing statement.

**10. Prior Indebtedness**

10.1 The lien of the Contract on the Property is and remains secondary and inferior to a prior lien in favor of None

securing a debt in the principal amount of \_\_\_\_\_. Borrower expressly covenants and agrees to pay or see to the payment of the Indebtedness secured by such prior lien and to prevent any default thereunder.

10.2 If the payment of any installment of principal or any interest on the prior Indebtedness is not made within the time required by such Indebtedness, or should an event of default occur under the terms of the prior lien and not be cured during any applicable grace period therein, then the Indebtedness secured by this assignment shall, at the option of Bank, become immediately due and payable.

**11. Reassignment on Full Performance**

If Borrower pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Borrower under this assignment and the Indebtedness, this assignment shall have no further force or effect, and all right, title, and interest in or to the contract assigned hereunder shall revert to Borrower. If Borrower requests, Bank shall then execute a reassignment of the Contract to Borrower.

**12. Default**

The following shall constitute events of default:

- (a) Failure of Borrower to pay any portion of the Indebtedness within 10 days from the date due.
- (b) Failure of Borrower within the time required by this assignment to make any payment for taxes, insurance, or any other payment necessary to prevent filing of or discharge of any lien.
- (c) Dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the Property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against, Borrower or any of the individuals who are herein collectively referred to as "Borrower."
- (d) Failure of Borrower to pay, or to effect payment by Buyer of, any installment of principal or interest on any prior lien as it shall become due, or commencement of any suit or other action to foreclose a prior lien.
- (e) Failure of Borrower to perform any other obligation under this assignment within 30 days after the date of mailing or delivery of written notice from Bank specifying the failure, or if the default cannot be cured within 30 days, failure within such time to commence and pursue curative action with reasonable diligence. No notice of default and no opportunity to cure shall be required if Bank has provided a notice to Borrower concerning default in performance of the same obligation within the previous 12 months.

**13. Rights and Remedies on Default**

13.1 Upon the occurrence of any event of default and at any time thereafter, Bank may exercise any one or more of the following rights and remedies:

- (a) Bank shall have the right at its option without notice to Borrower to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.
- (b) With respect to all or any part of the Contract that constitutes personalty, Bank shall have all the rights and remedies of a secured party under the Uniform Commercial Code for the state in which the Property is located. The parties intend this assignment to be a security interest in personal property.
- (c) To the extent this assignment constitutes a security interest in realty, Bank shall have the right to foreclose by judicial foreclosure, in accordance with applicable law.
- (d) If the Buyer is in default under the Contract, Bank may foreclose the Contract as provided therein, either in Bank's own name or in the name of Borrower.
- (e) Bank shall have the right, without notice to Borrower and to the extent permitted under the Contract, to take possession of the Property, and to collect all rents and profits, including those past due and unpaid, and apply the net proceeds, over and above Bank's costs, against the Indebtedness. In furtherance of this right, Bank may require any tenant or other user to make payments of rent or use fees directly to Bank, and payments by such tenant or user to Bank in response to its demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed.
- (f) To the extent not inconsistent with the Contract, Bank shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property and to operate the Property preceding foreclosure or sale and apply the proceeds, over the above cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Bank's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the Indebtedness by a substantial amount.
- (g) In the event Borrower or Buyer remains in possession of the Property after the Property is sold as provided above or Bank otherwise becomes entitled to possession of the Property upon default of Borrower or Buyer, the person in possession shall become a tenant at will of Bank or the purchaser of the Property and shall pay while in possession a reasonable rental for use of the Property.
- (h) Any other right or remedy provided in this assignment or the Indebtedness.

13.2 Bank shall give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the Property is to be made. Reasonable notice shall mean notice given at least ten days before the time of the sale or disposition.

13.3 A waiver by either party of a breach of a provision of this agreement shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Bank to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Borrower under this assignment after failure of Borrower to perform shall not affect Bank's right to declare a default and exercise its remedies under this assignment.

13.4 In the event suit or action is instituted to enforce any of the terms of this assignment, the prevailing party shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. All reasonable expenses incurred by Bank that are necessary at any time in Bank's opinion for the protection of its interest or the enforcement of its rights, including without limitation, the cost of searching records, obtaining title reports, surveyors' reports, attorneys' opinions or title insurance, whether or not any court action is involved, shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the same rate as the Indebtedness then bears.

**14. Notice**

Any notice under this assignment shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the address stated in this assignment. Any party may change the address for notices by written notice to the other parties.

**15. Miscellaneous**

15.1 Subject to the limitations stated in this assignment on transfer of Borrower's interest, this assignment shall be binding upon the inure to the benefit of the parties, their successors and assigns.

15.2 In construing this assignment and term "assignment" shall encompass the term "security agreement" when the instrument is being construed with respect to any personal property.

15.3 If Borrower consists of more than one person or entity, the obligations imposed upon Borrower under this assignment shall be joint and several.

15.4 This assignment is made pursuant to and shall be governed by the laws of the state in which the Property is located.

15.5 Time is of the essence of this assignment.

14600

Date X Name See Below Date X Name See Below  
Date X Name See Below Date X Name See Below

### INDIVIDUAL ACKNOWLEDGEMENT

STATE OF Washington )

County of Okanogan ) ss

On this day personally appeared before me

to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this day of, 19 1982.

BY

Notary Public in and for the State of:

Residing at

My commission expires

### CORPORATE ACKNOWLEDGEMENT

STATE OF Washington )

County of Okanogan ) ss

On this day of, 19 1982, before me personally appeared Quin D. Million

to me known to be the Vice President  
to me known to be the Treasurer

and Marlene O. Million

authorized agent(s) for the corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they ~~was~~ were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

BY

Notary Public in and for the State of:

Residing at

My commission expires 8-9-83

### PARTNERSHIP ACKNOWLEDGEMENT

STATE OF Washington )

County of Okanogan ) ss

THIS CERTIFIES that on this day of, 19 1982, personally appeared before me the undersigned, a Notary Public in and for said County and State, the within named

known to me to be the person named in and who executed the foregoing instrument and who known to me to be member of the partnership of

acknowledge to me that he executed said instrument freely and voluntarily for the purposes and use herein mentioned, on behalf of said partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal the day and year last above written.  
Before me:

BY

Notary Public in and for the State of:

Residing at

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 3 day of Nov A.D., 1982 at 8:59 o'clock A M., and duly recorded in

Vol MB2 of Deeds on page 14597.

Fee \$ 16.00

EVELYN BIEHN  
COUNTY CLERK

By Joey M. Chao deputy