

7582

1772-1776-1871
ASSIGNMENT AND MORTGAGE

Vol. 18 Page - 9284

DATE: June 1st, 1937

PARTIES:
GAYLE PAINE NICHOLSON
5220 South Sixth Street
Hilmar Falls, OR 97343

Assignor-Mortgagee

SOUTH TRUST STATE BANK
5215 South Sixth Street
Hilmar Falls, OR 97343

Assignee-Mortgagee

RECITALS:

1. The Assignor-Mortgagee is one of the buyers under an Agreement of Sale dated September 21, 1935, ("Agreement of Sale"), recorded on page 17812 in Volume M-73 of Records of Hilmar County, Oregon, wherein Harry E. Waggoner and Norma E. Nicholson, as husband and wife, are Sellers and William E. Nicholson, Jr. and Gayle Paine Nicholson, husband and wife, are buyers. A complete description of which is set forth on Exhibit "A" attached hereto. Harry E. Waggoner has died. William E. Nicholson, Jr. and Gayle Paine Nicholson have divorced and on January 15, 1936 executed an instrument wherein they created certain as tenants in common, which instrument was recorded on page 908 in Volume M-86 of Records of Hilmar County, Oregon.

2. The Assignor-Mortgagee desired to borrow funds from the Assignee-Mortgagee and to use her interest in the above mentioned real property as security for said loan. It is acknowledged that the loan is for business purposes; that the Assignee-Mortgagee is depending primarily upon the credit and other security of the Assignor-Mortgagee and that the security granted herein is additional security for the loan.

3. In consideration of the loan of money hereinafter described, the Assignor-Mortgagee assigns and mortgages and the parties agree as follows:

AGREEMENTS

SECTION 1. ASSIGNMENT:

1.1 For value received by Assignor from Assignee, Assignor hereby grants, conveys, sells and conveys to Assignee, her successors and assigns, all of Assignor's right, title and interest in the contractual rights set forth in Exhibit A above.

1.2 The Assignor certifies that she is the owner of an undivided one-half interest in the Vendor's interest in the Agreement of Sale; that the Vendor has not in default under the terms of the Agreement of Sale; that the Vendor's interest in the Agreement of Sale is free of all liens and encumbrances; and that the unpaid balance of the purchase price due under the Agreement of Sale is \$ 105,434.07, with interest paid to June 1, 1937.

1772. South Trust State Bank
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1.3 The Assignee hereby does not agree to assume the obligation of the Trustee under the Agreement of Sale, but merely takes this Assignment for security purposes.

SECTION 2. CONFIDENCE:

For value received by Mortgagee from Mortgagor, as Mortgagee, its successors and assigns, the said Mortgagee described in Section 1.1, attached hereto, together with the improvements now or hereafter belonging to the property, and all the rents, issues and profits arising or to arise therefrom, and the property subject to this Mortgage in whatever order referred to in the "Mortgage Preamble", Mortgagor will deliver and collect all revenues from the Mortgaged Premises, and any leases and

SECTION 3. PURPOSE:

This confidence 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 Mortgagee and Mortgagor, and to secure the payment of a loan or loans in the sum of Seventy Five Thousand and no/100 \$75,000.00, as evidenced by promissory note or notes held by the Mortgagee, together with interest payable on the unpaid balances thereof at the rates specified in the notes or at such other rates prescribed from time to time by Mortgagee in accordance with the said agreement with Mortgagor, and any or all renewals or extensions thereof. All covenants and provisions of this Mortgage shall bind the successors and assigns of Mortgagee and shall inure to the benefit of the successors and assigns of Mortgagee. This Mortgage shall also include any and all future advances made by Mortgagee to Mortgagor.

SECTION 4. PAYMENT AND PERFORMANCE:

Mortgagor will pay, when due, the indebtedness secured by this Mortgage in accordance with the terms thereof. Mortgagee 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. Mortgagee 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 the due. Mortgagee will pay, when due, the amounts due under the Agreement of Sale and to perform all and any conditions thereof.

SECTION 5. DEFAULTS:

5.1 Events of Default: The occurrence of any one or more of the following events shall constitute a default:

- (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 and Mortgagee;

(3) Mortgagee's insolvency or inability to pay the debt as they mature or Mortgagee'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 of reorganization with creditors, or filing in liquidation or in taking any other action indicating insolvency in any involuntary petition pursuant to, or purporting to be pursuant to, any bankruptcy, reorganization or insolvency law of any jurisdiction, or adjudication of Mortgagee as bankrupt or insolvent by any court of competent jurisdiction or appointment of a receiver for any substantial portion of Mortgagee's property.

(4) Sale or other transfer of the Mortgaged Premises, or any part thereof, without the prior written consent of Mortgagee.

(5) The failure of the Mortgagee to make any payment or to comply with any terms or conditions of the Agreement of Sale.

3.2 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 payable, together with any payments penalties imposed by any agreement or security agreement between Mortgagee and Mortgagee, 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 at to any past or subsequent violation of any covenants or obligations.

In addition to all other remedies provided herein, or by law, the Mortgagee, under the provisions of this Agreement, may make payments upon the Agreement of Sale and use such payments first to the principal due under this Agreement and to collect costs and profits upon the real property and to hire a receiver appointed by a court of competent jurisdiction, during the pendency of any legal proceedings.

SECTION 4. ATTORNEY FEES AND OTHER COSTS:

In the event suit or action is begun to foreclose this Mortgage, Mortgagee will pay, in addition to the costs and disbursements allowed by law, such sums as the court may adjudge reasonable as attorney fees in such suit or action, or any appeal therefrom. Mortgagee will also pay such sums as the court may adjudge reasonable for the necessary examination and review of the public records respecting the title to the Mortgaged Premises, the plaintiff in such suit or action may take judgment against the said sum. Mortgagee 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 its proceeds, or in defending against claims, claims, suits, claims, demands or proceedings, or the enforcement of title to the Mortgaged Premises. Interest shall be paid to Mortgagee on all such sums as the date that payable on the indebtedness secured hereby. This Mortgage shall stand as security for payment of these sums and interest in the amount and effect as for payment of the indebtedness secured.

SECTION 5. MISCELLANEOUS.

5.1 Definitions: The word "Mortgagee" and the

Language of this instrument shall, where there is more than one mortgage, be construed as plural and be binding jointly and severally upon all mortgagors and the word "mortgagor" shall apply to any holder of this mortgage.

1.2 Remedies: No condition of this mortgage shall be deemed waived unless expressly waived in writing by mortgagor.

1.3 Mortgages: 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 post paid envelope addressed to mortgagor at the last address actually furnished in mortgage, or at the mortgage premises, and deposited in any post office within or near the post.

1.4 Applicable Law: This mortgage shall be governed by the laws of the State of Oregon and any questions relating thereto shall be construed or determined according to such law.

1.5 zoning: This instrument will not allow use of the property described in this instrument in violation of applicable laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate City or County Planning Department to verify approved use.

IN WITNESS WHEREOF the parties have set their hands and seals the day and year first hereinafore written.

ASSIGNOR-MORTGAGOR

Gayle Payne Nicholson
Gayle Payne Nicholson

ASSIGNEE-MORTGAGEE

SOUTH TALLEY STATE BANK, an Oregon Banking Corporation.

BY: *John A. ...*
President

STATE OF OREGON
County of Elmore

19. June 1, 1987.

Personally appeared the above-named, GAYLE PAYNE NICHOLSON, and acknowledged the foregoing instrument to be her voluntary act. Before me:

Notary Public for Oregon
My Commission expires: 4/22/90

