MTC-1796-1871

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ASSIGNMENT AND MORTGAGE

DATED: June 1st, 1987

PARTIES: GAYLE PAYNE NICHOLSON
5220 South Sixth Street
Klamath Falls, OR 97603

Assignor-Mortgagor

SOUTH VALLEY STATE BANK
5215 South Sixth Street
Klamath Falls, OR 97603

Assignee-Mortgagee

R E C I T A L S:

A. The Assignor-Mortgagor is one of the Buyers under an Agreement of Sale dated September [illegible], 19[illegible], ("Agreement of Sale"), recorded on page [illegible] in Volume M-[illegible] of Records of Klamath County, Oregon, wherein Harry R. Waggoner and Norma E. Waggoner, as husband and wife, are Sellers and William R. Nicholson, Jr. and Gayle Payne Nicholson, husband and wife, are Buyers, a complete description of which is set forth on Exhibit "A" attached hereto. Harry R. Waggoner has died. William R. Nicholson, Jr. and Gayle Payne Nicholson have divorced and on January 15, 1986 executed an instrument wherein they created estates as tenants in common, which instrument was recorded on page 908 in Volume M-86 of Records of Klamath County, Oregon.

B. The Assignor-Mortgagor desires 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-Mortgagor and that the security granted herein is additional security for the loan.

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

ASSIGNMENTS

SECTION 1. ASSIGNMENT.

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

1.2 The Assignor covenants that she is the owner of an undivided one-half interest in the Vendee's interest in the Agreement of Sale; that the Vendees are not in default under the terms of the Agreement of Sale; that the Vendee'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,[illegible] , with interest paid to June 1 , 1987.

[illegible] South Valley State Bank
5215 So 6th Street
Klamath Falls, OR 97603

1.3 The Assignee hereby does not agree to assume the obligation of the Vendee under the Agreement of Sale, but merely takes this Assignment for security purposes.

<u>SECTION 2. CONVEYANCE:</u>

For value received by Mortgagor from Mortgagee, Mortgagor hereby mortgages, grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the real property described in Exhibit "A" attached hereto, together with all appurtenances now or hereafter belonging to the property, and all the rents, issues and profits arising or to arise therefrom. All property subject to this Mortgage is hereinafter referred to as the "Mortgaged Premises". Until default, Mortgagor will remain in possession of the Mortgaged Premises, and may manage and collect all revenues from the Mortgaged Premises.

<u>SECTION 3. PURPOSE:</u>

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 the payment of a loan or loans in the sum of <u>Seventy Five Thousand and 00/100</u> ($ 75,000.00) DOLLARS, as evidenced by a 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 law and 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 Mortgagor 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 Mortgagors.

<u>SECTION 4. PAYMENT AND PERFORMANCE:</u>

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 its use. Mortgagor will pay, when due, the amounts due under the Agreement of Sale and to perform all and any conditions therein.

<u>SECTION 5. DEFAULT:</u>

5.1 <u>Events of Default</u>: 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 and Mortgagee;

(d) Mortgagor's insolvency or inability to pay her 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.

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

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

5.2 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 prepayment penalties imposed by any agreement or security agreement between Mortgagor 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 as to any past or subsequent violation of any covenants or stipulations.

In addition to all other remedies provided herein, or by law, the Mortgagee, under the assignment provisions of this Agreement, may make payments upon the Agreement of Sale and add such payments back to the principal due under this Agreement and to collect rents and profits upon the real property and to have a Receiver appointed by a court of competent jurisdiction, during the pendency of any legal proceedings.

SECTION 6. ATTORNEY 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 sums as the court may adjudge reasonable as attorney fees in such suit or action, or any appeal therefrom. Mortgagor will also pay such sums 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 7. MISCELLANEOUS.

7.1 Terminology: The word "Mortgagor" and the language of this instrument shall, where there is more than one Mortgagee, 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.

7.2 Nonwaiver: No condition of this Mortgage shall be deemed waived unless expressly waived in writing by Mortgagee.

7.3 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 post paid 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.

7.4 Applicable Law: This Mortgage shall be governed by the laws of the State of Oregon and any questions arising hereunder shall be construed or determined according to such laws.

7.5 Zoning. This instrument will not allow use of the property described in this instrument in violation of applicable land use 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 hereinabove written.

ASSIGNOR-MORTGAGOR

Gayle Payne Nicholson

Gayle Payne Nicholson

ASSIGNEE-MORTGAGEE

SOUTH VALLEY STATE BANK, an Oregon Banking Corporation,

By: [illegible]
President

STATE OF OREGON)
) ss. June 1, 1987.
County of Klamath)

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: [illegible]

1-9668 909

EXHIBIT "A"

PARCEL 1:

A portion of the [illegible], Section 7, Township [illegible] South, Range [illegible] East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows: Beginning at a [illegible] iron pin which bears North [illegible] East [illegible] feet and North [illegible] West [illegible] feet from the iron pin marking the Southwest corner of said [illegible], said point being the Northwest corner of parcel conveyed by [illegible] to [illegible] by deed recorded in Volume [illegible] at page [illegible]; thence North [illegible] West along the North line of last-mentioned parcel, [illegible] feet to a P.K. nail; thence [illegible] feet to a [illegible] iron pin; thence [illegible] feet to a point; thence South [illegible] East [illegible] feet, more or less, to the point of beginning.

PARCEL 2:

Beginning at an iron pin which bears South [illegible] West [illegible] feet and North [illegible] West [illegible] feet and South [illegible] West [illegible] feet from the iron pin which marks the center of Section 7, Township [illegible] South, Range [illegible] East of the Willamette Meridian, and running thence South [illegible] parallel with the East Southerly line of Pleasant Home Tracts, [illegible] to a point; thence North [illegible] West [illegible] feet, more or less, to a point on the South line of Lot [illegible], Pleasant Home Tracts, [illegible] feet East along said Southerly line of Pleasant Home Tracts; thence North [illegible] South [illegible] East parallel with the center line of [illegible] Street, [illegible] feet, more or less, to the point of beginning.

PARCEL 3:

The Southerly [illegible] feet of Lot [illegible], PLEASANT HOME TRACTS, in the County of Klamath, State of Oregon, LESS AND EXCEPTING the West [illegible] feet thereof, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 4:

Lot 3, PLEASANT HOME TRACTS, in the County of Klamath, State of Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 5:

A portion of the [illegible], Section 7, Township [illegible] South, Range [illegible] East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows: Beginning at a [illegible] iron pipe on the North line of said [illegible] which bears North [illegible] East [illegible] feet from the iron axle marking the Southwest corner of Lot [illegible], Pleasant Home Tracts; thence South [illegible] East [illegible] feet to a concrete nail set [illegible] feet South of a [illegible] fence post; thence South [illegible] East [illegible] feet to a point on the Northerly right of line of South [illegible] Street as now located and constructed; thence North [illegible] East along said right of way line, [illegible] feet to a point; thence North [illegible] West [illegible] feet to a [illegible] iron pin; thence South [illegible] East [illegible] feet to a [illegible] iron pin; thence [illegible] feet, more or less, to a point which is [illegible] feet North of the South line of Lot [illegible], Pleasant Home Tracts; thence North [illegible] West [illegible] point on the West line of said Lot [illegible], Pleasant Home Tracts; thence South [illegible] West [illegible] feet to a [illegible] feet, more or less, to the North line of said [illegible]; thence North [illegible] South [illegible] West, along said North line, [illegible] feet, more or less, to the point of beginning.

STATE OF OREGON: COUNTY OF KLAMATH; ss.

Filed for record at request of [illegible]

this [illegible] day of [illegible] A.D. 19 [illegible] at [illegible] o'clock [illegible] M., and duly recorded in Vol. [illegible] of [illegible] on Page [illegible]

FEE [illegible]

Evelyn Biehn, County Clerk

By [illegible]

EXHIBIT "A"

STATE OF OREGON: COUNTY OF KLAMATH; ss.

Filed for record at request of [illegible]

the [illegible] day of June A.D. 19 87 at [illegible] o'clock [illegible] M., and duly recorded in Vol. [illegible] of [illegible] on Page [illegible]

FEE [illegible]

Evelyn Biehn, County Clerk

By [illegible]