

After recording, please return to:

**96533**

KLAMATH FIRST FEDERAL

P. O. Box 5270

Klamath Falls, OR 97601

Vol m89 Page 1833

## CONDITIONAL ASSIGNMENT OF RENTALS

THIS AGREEMENT, Entered into this 27th day of January, 19 89, betweenAPPLEGATE DEVELOPMENT CORPORATION, and MONTE D. YOUNG, PETER C. VAN DER BOOMAND MARVIN L. WILLIAMS, individually

hereinafter referred to as Owner, and KLAMATH FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, A Federal Corporation, hereinafter referred to as Mortgagee.

## W I T N E S S E T H:

WHEREAS, Owner is the present owner in fee simple of property described as:

Please see attached EXHIBIT A.

Deed of Trust

in Klamath County, State of Oregon, and the mortgagee is owner and holder of a first ~~mortgage~~ covering said premises, which said mortgage is in the original principal sum of \$155,000.00, made by owner to mortgagee under the date of January 27, 1989; and

WHEREAS, Mortgagee, as a condition to making said loan and accepting said mortgage has required the execution of this assignment of the rentals of the mortgage premises by owner.

NOW, THEREFORE, in order further to secure the payment of the indebtedness of the owner to mortgagee and in consideration of the accepting of the aforesaid mortgage and the note secured thereby, and in further consideration of the sum of One Dollar paid by mortgagee to owner, receipt of which is hereby acknowledged, the said owner does hereby sell, assign, transfer and set over unto mortgagee all of the rents, issues and profits of the aforesaid mortgaged premises, this assignment to become operative upon any default being made by the owner (mortgagor) under the terms of the aforesaid mortgage or the note secured thereby, and to remain in full force and effect so long as any default continues to exist in the matter of the making of any of the payments or the performance of any of the covenants set forth in the aforesaid mortgage or the notes secured thereby.

1. In furtherance of the foregoing assignment, the owner hereby authorizes the mortgagee, its employees or agents, at its option, after the occurrence of a default as aforesaid to enter upon the mortgaged premises and to collect, in the name of the owner, or in thier own name as assignee, the rents accrued but unpaid and in arrears at the date of such default, as well as the rents thereafter accrued but unpaid and in arrears at the date of such default, as well as the rents thereafter accruing and becoming payable during the period of the continuance of the said or any other default; and to this end, the owners further agree they will facilitate in all reasonable ways the mortgagee's collection of said rents and will upon request by mortgagee, execute a written notice to the tenant directing the tenant to pay rent to the said mortgagee.

2. The owner also hereby authorizes the mortgagee upon such entry, at its option, to take over and assume the management, operation and maintenance of the said mortgaged premises and to perform all acts necessary and proper and to expend such sums out of the income of the mortgaged premises as may be needful in connection therewith, in the same manner and to the same extent as the owner theretofore might do, including the right to effect new leases, to cancel or surrender existing leases, to alter or amend the terms of existing leases, to make concessions to tenants, the owner hereby releasing all claims against mortgagee arising out of such management, operation and maintenance excepting the liability of the mortgagee to account as hereinafter set forth.

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3. The mortgagee shall, after payment of all proper charges and expenses, including reasonable compensation to such Managing Agent as it shall select and employ and after the accumulation of a reserve to meet taxes, assessments, water rents and fire and liability insurance in requisite amounts, credit the net amount of income received by it from the mortgaged premises by virtue of this assignment, to any amounts due and owing to it by the owners under the terms of the mortgage and the note secured thereby but the manner of the application of such net income and what items shall be credited, shall be determined in the sole discretion of the mortgagee. The mortgagee shall not be accountable for more moneys than it actually received from the mortgaged premises; nor shall it be liable for failure to collect rents. The mortgagee shall make reasonable effort to collect rents, reserving, however, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted.

4. In the event, however, that the owner shall reinstate the mortgage loan completely in good standing, having complied with all the terms, covenants and conditions of the said mortgage and the note secured thereby, then the mortgagee within one month after demand in writing shall re-deliver possession of the mortgaged premises to owner, who shall remain in possession unless and until another default occurs, at which time the mortgagee may, at its option, again take possession of the mortgaged premises under authority of this instrument.

5. The owner hereby covenants and warrants to the mortgagee that neither it, nor any previous owner, have executed any prior assignment or pledge of the rentals of the mortgaged premises, nor any prior assignment or pledge of its landlords' interest in any lease of the whole or any part of the mortgaged premises. The owner also hereby covenants and agrees not to collect the rents of the said mortgaged premises in advance, other than as required to be paid in advance by the terms of any rental agreement, and further agrees not to do any other act which would destroy or impair the benefits to the mortgagee of this assignment.

6. It is not the intention of the parties hereto that an entry by the mortgagee upon the mortgaged premises under the terms of the instrument shall constitute the said mortgagee a "mortgagee in possession" in contemplation of law, except at the option of the mortgagee.

7. This assignment shall remain in full force and effect as long as the mortgage debt to the mortgagee remains unpaid in whole or in part.

8. The provisions of this instrument shall be binding upon the owner, its successors or assigns, and upon the mortgagee and its successors or assigns. The word "Owner" shall be construed to mean any one or more persons or parties who are holders of the legal title or equity of redemption to or in the aforesaid mortgaged premises. The word "note" shall be construed to mean the instrument, whether note or bond, given to evidence the indebtedness held by the mortgagee against the mortgaged premises; and the word "mortgage" shall be construed to mean, the instrument securing the said indebtedness owned and held by the mortgagee, whether such instrument be mortgage, loan deed, trust deed, vendor's lien or otherwise.

It is understood and agreed that a full and complete release of the aforesaid mortgage shall operate as a full and complete release of all the mortgagee's rights and interests hereunder, and that after said mortgage has been fully released, this instrument shall be void and of no further effect.

Dated at Klamath Falls, Oregon, this 28 day of January, 19 89.

APPLGATE DEVELOPMENT CORPORATION by:

Monte D. Young  
Monte D. Young, individually

Monte D. Young, President  
Monte D. Young, President

Peter C. Van der Boom  
Peter C. Van der Boom, individually

Peter C. Van der Boom VP  
(Seal)  
Peter C. Van der Boom, Vice President

Marvin L. Williams  
Marvin L. Williams, individually

Marvin L. Williams ST  
Marvin L. Williams, Secretary/Treasurer

~~Please see pages 3 and 4 for notary acknowledgements.~~

STATE OF Oregon )  
 ) ss.  
COUNTY OF Klamath )

THIS CERTIFIES, that on this 28 day of January, 19 89, before me, the undersigned, a Notary Public for said state, personally appeared the within named \_\_\_\_\_

\_\_\_\_\_  
Monte D. Young

to me known to be the identical person described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily for the purpose therein expressed.

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

Lavin J. Young  
Notary Public for the State of Oregon

My commission expires: 7-9-89

FORM No. 784—ACKNOWLEDGMENT, CORPORATION (ORS 93.490).

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

STATE OF OREGON, }  
County of Klamath } ss.

Personally appeared \_\_\_\_\_ Monte D. Young

January 28, 1989

\_\_\_\_\_ who being duly sworn (or affirmed) did say that he is the

\_\_\_\_\_ President \_\_\_\_\_

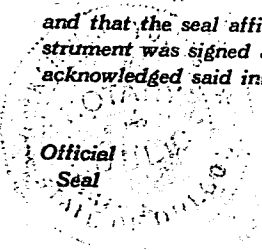
(President or other officer or officers)

of \_\_\_\_\_ APPLEGATE DEVELOPMENT CORPORATION \_\_\_\_\_

(Name of corporation)

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act and deed.

Before me:



Lavin J. Young  
Notary Public for Oregon.  
My Commission expires 7-9-89

## EXHIBIT A

All of ENTERPRISE TRACT NO. 26, EXCEPT the South 697 feet and EXCEPT the East 260 feet; all of ENTERPRISE TRACT NO. 31, EXCEPT that portion which is included in the plat of SUNNYLAND.

ALSO EXCEPTING THEREFROM the following 5 parcels of property:

**PARCEL 1** Beginning at the Northeast corner of Lot 9, ELM PARK in Klamath County, Oregon; thence North 0° 53' West 246.95 feet to a point on the South line of a Canal; thence along the South line of said Canal and along the arc of a 714.22 foot radius curve to the left (the chord of which bears North 55° 55' West 93.57 feet) a distance of 93.63 feet; thence South 0° 05' East 300.63 feet to a point on the North line of said Lot; thence North 89° 06' East 80.87 feet to the place of beginning, being situated in the SW $\frac{1}{4}$  of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

**PARCEL 2** Beginning on the North line of Lot 9, ELM PARK in Klamath County, Oregon at a point which is 80.87 feet South 89° 06' West from the Northeast corner of said Lot; thence North 0° 05' West 300.63 feet to a point on the South line of a Canal; thence along the South line of said Canal and along the arc of a 714.22 foot radius curve to the left (the chord of which bears North 65° 25' West 143.05 feet) a distance of 143.29 feet; thence South 0° 05' East 362.19 feet to a point on the North line of said Elm Park; thence North 89° 06' East 130.01 feet to the place of beginning, being situated in the SW $\frac{1}{4}$  of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

**PARCEL 3** Beginning on the North line of ELM PARK in Klamath County, Oregon, at a point which is 210.88 feet South 89° 06' West from the Northeast corner of Lot 9, ELM PARK; thence South 89° 06' West 170.52 feet to a point; thence North 0° 05' West 400.59 feet to a point on the South line of a Canal; thence along the South line of said Canal and along the arc of a 714.22 foot radius curve to the left to a point which is North 0° 05' West 362.19 feet from the point of beginning; thence South 0° 05' East 362.19 feet to the place of beginning, being situated in the SW $\frac{1}{4}$  of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

**PARCEL 4** Commencing at the Northeast corner of Lot 37, Enterprise Tracts, Klamath County, Oregon; thence South 0° 15' 30" East, along the centerline of Avalon Street, 355.75 feet; thence South 56° 38' 10" East, 36.03 feet to a point on the East Boundary of said street for the true point of beginning; thence South 56° 38' 10" East, 108.05 feet; thence South 73° 31' 10" East, 41.51 feet; thence North 79° 52' East, 103.20 feet; thence North 70° 29' 20" East, 154.58 feet; thence North 89° 25' 40" East, 82.78 feet; thence North 01° 24' 20" West, 31.01 feet; thence North 89° 25' 40" East, 50.00 feet; thence North 134.58 feet, to the South-westerly boundary of the U.S.R.S. "A" Canal; thence along said canal boundary North 81° 17' West, 23.93 feet; thence 299.22 feet along the arc of a curve right (which arc has a radius of 433.10 feet and a long chord of North 61° 29' 30" West 293.30 feet); thence North 41° 42' West, 183.35 feet to the Southeasterly boundary of Eberlein Avenue; thence along said boundary South 47° 52' 54" 30" West, 144.93 feet to the East boundary of Avalon Street; thence along said boundary South 0° 15' 30" East, 348.87 feet to the true point of beginning.

**PARCEL 5** A Parcel of land, situated in Tract 31 Enterprise Tracts, in Klamath County, Oregon; being more particularly described as follows:  
Beginning at a  $\frac{1}{2}$ " rebar marking the Northwest corner of Block 1, Sunnyland Sub-division, said point also being on the Easterly right-of-way line of Avalon Street; thence North 00° 15' 30" West 237.85 feet, along the Easterly right-of-way line of Avalon Street, to a  $\frac{1}{2}$ " rebar; thence South 56° 38' 10" East 99.79 feet to a  $\frac{1}{2}$ " rebar; thence South 73° 31' 10" East, 47.66 feet to a  $\frac{1}{2}$ " rebar; thence North 79° 52' 00" East, 108.29 feet to a  $\frac{1}{2}$ " rebar; thence North 70° 29' 20" East, 50.00 feet to a  $\frac{1}{2}$ " rebar; thence South 89° 24' 00" East 54.07 feet to a  $\frac{1}{2}$ " rebar; thence South 00° 11' 48" East, 183.24 feet to a  $\frac{1}{2}$ " rebar; thence South 89° 45' 30" West, 20.00 feet to a  $\frac{1}{2}$ " rebar; thence South 00° 11' 48" East, 20.00 feet to a  $\frac{1}{2}$ " rebar on the Northerly boundary of Sunnyland Subdivision; thence South 89° 45' 30" West, 316.48 feet, along the Northerly boundary of Sunnyland Subdivision to the place of beginning.

TAX ACCOUNT NO. 3809 034CD 00600

STATE OF OREGON,

County of Klamath } ss.

Personally appeared

Monte D. Young

January 28, 1989

who being duly sworn (or affirmed) did say that he is the

President

(President or other officer or officers)

of

APPLEGATE DEVELOPMENT CORPORATION

(Name of corporation)

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act and deed.

Before me:

Kand J Young

Notary Public for Oregon.

My Commission expires

7-9-89STATE OF OREGON, Oregon } ss.County of Klamath

Personally appeared

Peter C. Van der Boom

January 28, 1989

who being duly sworn (or affirmed) did say that he is the

Vice President

(President or other officer or officers)

of

APPLEGATE DEVELOPMENT CORPORATION

(Name of corporation)

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act and deed.

Before me:

Kand J Young

Notary Public for Oregon

My Commission expires

7-9-89STATE OF OREGON, Oregon } ss.County of Klamath

Personally appeared

Marvin L. Williams

January 28, 1989

who being duly sworn (or affirmed) did say that he is the

Secretary/Treasurer

(President or other officer or officers)

of

APPLEGATE DEVELOPMENT CORPORATION

(Name of corporation)

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act and deed.

Before me:

Kand J YoungNotary Public for Oregon: Oregon

My Commission expires

7-9-89

STATE OF OREGON

1838

COUNTY OF Klamath

ss.

January 28, 1989

THIS CERTIFIES, that on this 28 day of January, 1989, before me, the undersigned, a Notary Public for said state, personally appeared the within named:

Monte D. Young

to me known to be the identical person described in and who executed the within instrument and acknowledged to be that he executed same freely and voluntarily for the purpose therein expressed.

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

Karin J. Young  
Notary for the State of Oregon

My commission expires: 7-9-89

STATE OF Oregon

ss.

COUNTY OF Klamath

January 28, 1989

THIS CERTIFIES, that on this 28 day of January, 1989, before me, the undersigned, a Notary Public for said state, personally appeared the within named:

Peter C. Van der Boom

to me known to be the identical person described in and who executed the within instrument and acknowledged to be that he executed same freely and voluntarily for the purpose therein expressed.

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

Karin J. Young  
Notary for the State of Oregon

My commission expires: 7-9-89

STATE OF Oregon

ss.

COUNTY OF Klamath

January 28, 1989

THIS CERTIFIES, that on this 28 day of January, 1989, before me, the undersigned, a Notary Public for said state, personally appeared the within named:

Marvin L. Williams

to me known to be the identical person described in and who executed the within instrument and acknowledged to be that he executed same freely and voluntarily for the purpose therein expressed.

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

Karin J. Young  
Notary for the State of Oregon

My commission expires: 7-9-89

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co.  
of Jan. A.D., 19 89 at 12:51 o'clock PM., and duly recorded in Vol. M89  
of Mortgages on Page 1833

FEE \$33.00

Evelyn Biehn County Clerk

By Pauline Mullendore