

12256 TRUST DEED Vol. m90 Page 4577

THIS TRUST DEED, made this 9th day of March, 1990, between Mark S. Hemstreet

as Grantor, Mountain Title Company of Klamath County, as Trustee, and Floyd L. Wynne and Cecil Fitzgerald

as Beneficiary,

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Klamath County, Oregon, described as:

Lots 1, 2, 3, 4, 5, Block 12; Lots 1, 2, 3, 4, 5 and 6, Block 2; Lots 1, 2, 3, 4 and 5, Block 3; All of Block 9; Lots 1, 2, 3, 4 and 5, Block 10; Lots 1, 2, 3, 4 and 5, Block 11; Lots 1, 2, 3, 4 and 5, Block 20; Lots 2, 3, 4 and 5, Block 21; and Lots 9 and 10, Block 22; OPPORTUNITY 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.

Tax Lot Nos. 3809 020BC 00500; 3809 020BC 01700; 3809 020BC 01800; 3809 020BC 01900; 3809 020BC 02200; 3809 020BC 00300; 3809 020BC 02800; 3809 020BC 03000; and 3809 020BC 03100

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of ~~Sixty-Five Thousand and no/100ths Dollars \$65,000.00~~ Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00) ~~with interest thereon according to the terms of a promissory note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable August 6, 1995.~~

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of said note becomes due and payable. In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the grantor without first having obtained the written consent or approval of the beneficiary, then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable.

1. To protect the security of this trust deed, grantor agrees: 1. To protect, preserve and maintain said property in good condition and repair, to remove or demolish any building or improvement thereon; not to commit or permit any waste of said property;

2. To complete or restore promptly and in good and workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.

3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions said property, if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require, and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the beneficiary.

4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the said premises against loss or damage by fire and such other hazards as the beneficiary may from time to time require, in an amount not less than \$11,200, written in companies acceptable to the beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the beneficiary as soon as insured, and if the grantor fails for any reason to procure any such insurance and to deliver said policies to the beneficiary, at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on said buildings, the beneficiary may procure the same at grantor's expense. The amount collected under any fire or other insurance policy may be applied by beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine; or beneficiary may release the entire amount so collected, or any part thereof, may be released to grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. To keep said premises free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefor to beneficiary; should the grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, either by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof, and the grantor, as agent or as assignor, shall be bound to the same extent that they are bound for the payment of the obligation herein described; and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed.

6. To pay all costs, fees and expenses of this trust including the cost of title search as well as the costs and expenses of the trustee incurred in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.

7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of beneficiary or trustee and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph 7 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, the grantor agrees to pay such sum as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney's fees on such appeal.

It is mutually agreed that:

8. In the event that portion or all of said property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation promptly upon beneficiary's request.

9. At any time and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may (a) consent to the making of any map or plat of said property; (b) join in

granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereon; (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the person or persons legally entitled thereto, and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.

10. Upon any default by grantor hereunder, beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as beneficiary may determine.

11. The entering upon and taking possession of said property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

12. Upon default by grantor in payment of any indebtedness secured hereby or in his performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, beneficiary may declare all sums secured hereby immediately due and payable. In such an event the beneficiary at his election may proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale, or may direct the trustee to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. In the latter event the beneficiary or the trustee shall execute and cause to be recorded his written notice of default and his election to sell the said described real property to satisfy the obligation secured hereby whereupon the trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount of the sums secured by the trust deed, or such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation or trust deed together with trustee's and attorney's fees not exceeding the amounts provided by law.

14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which said sale may be postponed as provided by law. The trustee may sell said property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney; (2) to the obligation secured by the trust deed; (3) to all persons claiming recorded liens subsequent to the interest of the grantor in the trust deed; their interests may appear in the order of their priority and (4) the surplus, if any, to the grantor or to his successor in interest entitled to such surplus.

16. Beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

17. Trustee accepts this trust when this deed, duly executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which the grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real property of this state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 695.505 to 695.585.

The grantor covenants and agrees to and with the beneficiary and those claiming under him, that he is lawfully seized in fee simple of said described real property and has a valid, unencumbered title thereto and that he will warrant and forever defend the same against all persons whomsoever.

ADDITIONAL TERMS ATTACHED HERETO AND INCORPORATED HEREIN.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are: (a) for the purchase of real property, or (b) for an organization, or (even if grantor is a natural person) are for business or commercial purposes.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a beneficiary herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and the neuter; and the singular number includes the plural.

IN WITNESS WHEREOF, said grantor has hereunto set his hand the day and year first above written.

* IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; If warranty (a) is applicable and the beneficiary is a creditor as such word is defined in the Truth-in-Lending Act and Regulation Z, the beneficiary MUST comply with the Act and Regulation by making required disclosures; for this purpose use Stevens-Ness Form No. 1319, or equivalent. If compliance with the Act is not required, disregard this notice.

(If the signer of the above is a corporation, use the form of acknowledgement opposite.)

STATE OF OREGON,)
County of Washington,) ss.

This instrument was acknowledged before me on March 7, 1990 by Mark S. Hemstreet

Notary Public for Oregon
My commission expires: 9/5/93

STATE OF OREGON,)
County of) ss.

This instrument was acknowledged before me on 19 by as of

Notary Public for Oregon
My commission expires:

(SEAL)

REQUEST FOR FULL RECONVEYANCE

To be used only when obligations have been paid. The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by said trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of said trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by said trust deed (which are delivered to you herewith together with said trust deed) and to reconvey, without warranty, to the parties designated by the terms of said trust deed the estate now held by you under the same. Mail reconveyance and documents to: DATED: 1990

Beneficiary

Do not lose or destroy this Trust Deed OR THE NOTE which it secures. Both must be delivered to the trustee for cancellation before reconveyance will be made.

TRUST DEED

Mark S. Hemstreet Grantor
Floyd L. Wynn and Cecil Fitzgerald Beneficiary

STATE OF OREGON,)
County of) ss.
I certify that the within instrument was received for record on the day of 19, at o'clock M., and recorded in book/reel/volume No. on page or as fee/title/instrument/microfilm/reception No. Record of Mortgages of said County. Witness my hand and seal of County affixed.

AFTER RECORDING RETURN TO ME 1992

SPACE RESERVED FOR RECORDER'S USE

By NAME TITLE Deputy

ADDITIONAL TERMS TO TRUST DEED
BETWEEN

MARK S. HEMSTREET, as Grantor,
MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY, as Trustee,
and
FLOYD L. WYNNE and CECIL FITZGERALD, as Beneficiaries

1. The Beneficiaries agree to subordinate this trust deed to Grantor's construction and/or permanent financing ("Grantor's Financing"). The amount to which Beneficiaries agree to subordinate for Grantor's Financing shall not exceed 75% of the MAI appraisal provided by Grantor of the projected finished, final indicated value of the entire motel, restaurant, deli-mart, service station, apartment house, nursing home, or other project that Grantor intends to construct on the property. Beneficiaries shall not be required to become personally liable for Grantor's Financing. At closing of the escrow for the sale of the property secured by this trust deed from Beneficiaries to Grantor, Beneficiaries shall execute and deposit with the escrow agent subordination agreements in a form acceptable to Grantor and Grantor's lenders, together with appropriate escrow instructions, to allow the recording of Beneficiaries' subordination agreement upon the closing of Grantor's construction and/or permanent financing. Beneficiaries also agree to execute such additional documents as Grantor's lenders may reasonably require to perfect the lender's first security position on the property. Except for the property taxes, Grantor's Financing, and such liens as Grantor and Beneficiaries may hereafter agree shall remain on the property, this trust deed shall be a first lien upon the property securing this trust deed.

2. Upon Grantor's payment of the \$30,000 payment due July 7, 1990, Beneficiaries agree to release Lots 1 and 2 of Block 3, OPPORTUNITY ADDITION, from the lien of this trust deed.

Dated this 9th day of March, 1990.


Mark S. Hemstreet

Floyd L. Wynne

Cecil Fitzgerald

JPK:sjs
JPK.002
SLD-104.012

**ADDITIONAL TERMS TO TRUST DEED
BETWEEN**

**MARK S. HEMSTREET, as Grantor,
MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY, as Trustee,
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Mark S. Hemstreet

Floyd L. Wynne
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Cecil Fitzgerald
Cecil Fitzgerald

JPK:sjs
JPK.002
SLD-104.012

Page 1. Additional Terms and Conditions (Wynne & Fitzgerald)

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 12th day
of March A.D., 19 90 at 2:40 o'clock P.M., and duly recorded in Vol. M90
of Mortgages on Page 4577
By Evelyn Riehn County Clerk
Caroline Mullendore

FEE 23.00