

3230

PARTIES:

City of Newport
Newport Urban Renewal Agency
Hallmark Inns & Resorts, Inc.

AFTER RECORDING, RETURN TO:

Margaret Hawker, City Recorder
City of Newport
169 SW Coast Hwy
Newport, Oregon 97365

NO CHANGE IN TAX STATEMENTS

The true and actual consideration, stated in terms of dollars, is NONE, but there is other good and valuable consideration which is the whole thereof.

FOURTH AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS

THIS Fourth Amendment to Covenants, Conditions and Restrictions, made and dated this 19th day of August, 2021, by and between the City of Newport, a municipal corporation, ("City"), the Newport Urban Renewal Agency, an Urban Renewal Agency existing under the laws of the State of Oregon ("Agency"), and Hallmark Inns & Resorts, Inc., a Washington corporation ("Hallmark"),

WITNESSETH:

RECITALS:

1. On or about July 23, 1992, Whaler Motel, Inc., an Oregon corporation ("Whaler") purchased from Agency, and Agency conveyed to Whaler, real property as more particularly described in a certain deed of conveyance, dated July 23, 1992, and recorded July 24, 1992, at page 1920, book 247, Film Records of Lincoln County, Oregon (the "Property").
2. Attached to and made a part of said conveyance, was an Exhibit A, setting forth certain covenants, conditions and restrictions, to which the Property was thereby made subject, setting forth requirements for development of the Property.
3. About March 30, 2007, by instrument recorded April 2, 2007, as document 200704725, Lincoln County Book of Records, the parties entered into an amendment of the covenants, conditions and restrictions set forth in said Exhibit A.
4. On or about March 8, 2013, the parties entered into a second such amendment, recorded March 11, 2013, as document 2013-02474, Lincoln County Book of Records.

Lincoln County, Oregon

08/19/2021 01:21:51 PM

DOC-C&R

\$35.00 \$11.00 \$60.00 \$10.00 \$7.00 - Total =\$123.00

2021-10684

Cnt=1 Pgs=7 Stn=12



00204179202100106840070078

I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.


Dana W. Jenkins, Lincoln County Clerk



5. The covenants, conditions and restrictions, including the amendments, are referred to as the "Covenants." Whaler completed the first phase of development as provided for in the Covenants, and requested additional time in which to complete the second phase of the development requirements. Whaler entered into a purchase and sale agreement with Hallmark, which is actively engaged in the hotel-motel industry in the City of Newport and is developing plans for substantial development of the second Phase of the Property, which the parties recognize will be beneficial to the area and to the City of Newport. Additional time will be required to carry out the second phase of development as called for by the Covenants, and the parties elected to extend the time for completion of the second phase of development, with a third amendment of the Covenants, recorded October 5, 2018, as document 2018-09990, Lincoln County Book of Records.

6. Hallmark subsequently purchased the Property from the Whaler, subject to the third amendment of the Covenants, pursuant to a warranty deed recorded December 14, 2018, as document 2018-12391, Lincoln County Book of Records.

7. Hallmark has made a good faith effort to commence the second phase of development, and is prepared to initiate the land use entitlement process in accordance with the timeline outlined in the Covenants. However, the financial impact that the COVID-19 pandemic has had on Hallmark makes it impractical for building permits to be pulled, construction commenced, and occupancy obtained as envisioned. Consequently, the parties agree that the Covenants should be amended to provide Hallmark additional time to complete the second phase of development.

NOW, THEREFORE, the parties enter into this Agreement to amend the above described Covenants. Section 2 and Section 3 of the covenants contained in Exhibit A (and including the later amendments) are amended and replaced to read as follows:

2. The first phase of development has been completed and placed in service. The second phase of development shall be ready for occupancy no later than July 23, 2025, and necessary permits for the commencement of construction shall be obtained from the City no later than July 23, 2023. Application for land use entitlements shall be made to the City no later than July 23, 2021. The Property thereafter shall be used for no purpose other than as a hotel, motel, or similar vacation, convention and tourist lodging and ancillary facilities and services, for a period of 20 years following the date the facilities comprising the second phase are ready for occupancy. The City agrees that permit and approval applications submitted for authorization to carry out such development will be processed expeditiously.

3. In the event Grantee fails to comply with the requirements for completion of the second phase of development of the Property, the Newport Urban Renewal Agency shall have the right and option to repurchase that part of the Property which has not been utilized in

connection with Phase 1 of the development, for a price of \$9.77 per square foot, upon condition that written notice to the Grantee or the Grantee's successors is given not later than July 23, 2026. If the Agency is dissolved, City shall succeed to and may exercise this right and option in the same manner and to the same extent as would Agency have been able to do so.

NEWPORT URBAN RENEWAL AGENCY

By

Ryan M. Parker
Ryan Parker, Chair

State of Oregon
County of Lincoln

This record was acknowledged before me on August 18, 2021, by Ryan Parker, the Chair of the Newport Urban Renewal Agency, and did say that he is the authorized representative of said Agency and the foregoing instrument was signed on behalf of said Agency as its voluntary act and deed.



CITY OF NEWPORT

By

Dean H. Sawyer
Dean H. Sawyer, Mayor

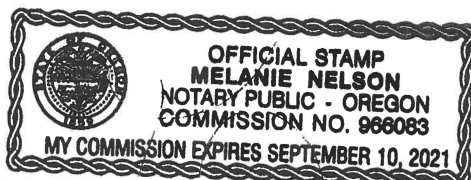
Melanie Nelson
Notary of Public for Oregon
My commission expires: 9/10/21

ATTEST:

Margaret M. Hawker
Margaret Hawker, City Recorder

State of Oregon
County of Lincoln

This record was acknowledged before me on August 18, 2021, by Dean H. Sawyer and Margaret Hawker, the former being the Mayor and the latter being the City Recorder of the City of Newport, a municipal corporation and political subdivision of the State of Oregon, and did say that they are the authorized representatives of said City and the foregoing instrument was signed on behalf of said City as its voluntary act and deed.



Melanie Nelson
Notary of Public for Oregon
My commission expires: 9/10/21

HALLMARK INNS & RESORTS, INC.


By


John R. Rabourn, President



State of Oregon
County of Lincoln

This record was acknowledged before me on August 19, 2021, by John R. Rabourn as President of Hallmark Inns & Resorts, Inc.


Notary of Public for Oregon
My commission expires: 11/03/2024

BOOK 247 PAGE 1920

11-11-8-EE TL 15900, 15901, 15902

LCT 203215-6

WARRANTY DEED

AFTER RECORDING RETURN TO:

UNTIL A CHANGE IS REQUESTED
SEND TAX STATEMENTS TO:Grantor:
NEWPORT URBAN RENEWAL AGENCY
Grantee:
CLARK, CLAY, BOHMANMINOR & BOONE, P.C.
P.O. BOX 510
NEWPORT, OR 97365

NO CHANGE REQUESTED

WARRANTY DEED

The NEWPORT URBAN RENEWAL AGENCY, an urban renewal agency organized and existing pursuant to Chapter 457, ORS, a governmental body and political subdivision of the State of Oregon, Grantor, conveys and warrants to MARK CLAY and JANET E. CLAY, husband and wife, as to an undivided 1/3 interest; JOHN B. CLARK and JOANNE M. CLARK, husband and wife, as to an undivided 1/3 interest; and BRUCE BOHMAN and JANE K. BOHMAN, husband and wife, as to an undivided 1/3 interest, Grantees, the following described real property free of encumbrances except as specifically set forth herein, situated in Lincoln County, Oregon, to-wit:

Lots 7, 8, 9, 10 and 18; also the south 10 feet of Lot 17, the north 30 feet of Lot 16 and those portions of Lots 11, 12, 14 and 15 lying southeasterly of that tract described in Deed to the City of Newport, recorded April 21, 1971 in Book 25, page 87, Film Records for Lincoln County, Oregon, in Block B, BARLOWS BLOCKS in Nye and Thompson's Addition to Newport, in the City of Newport, County of Lincoln and State of Oregon.

The said property is free from encumbrances except:

1. 1992-93 taxes, a lien in an amount to be determined but not yet payable.
2. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.
3. An easement created by instrument, including the terms and provisions thereof, dated August 10, 1955 and recorded March 14, 1963 in Book 232, page 500, Film Records of Lincoln County, Oregon, in favor of the City of Newport for sewer purposes.
4. Rights of the tenants in the existing residential structures. Grantor hereby assigns and transfers unto the Grantees all of the Grantor's interest, as landlord, in and to any lease or rental agreements affecting the subject property.
5. Covenants, conditions and restrictions as set forth in Exhibit A attached hereto, and made a part hereof.
6. Any right, title, interest, claim or encroachment as might be disclosed by an inspection or survey of the premises, or reasonable inquiry of persons in possession thereof.

BOOK 247 PAGE 1921

The true consideration for this conveyance is \$301,000.00.

Dated this 23 day of July, 1992.

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 USES.

NEWPORT URBAN RENEWAL AGENCY

BY: W. J. McKevitt
Chairman

ATTEST:

Sam I. Sasaki, Jr.
Secretary

STATE OF OREGON, County of Lincoln) ss.

July 23, 1992.

Personally appeared the above named William J. McKevitt and Sam I. Sasaki, Jr. who, being duly sworn, did say that they are are, respectively, the Chairman and Secretary of the Newport Urban Renewal Agency, a municipal corporation and political subdivision of the State of Oregon, and acknowledged the foregoing instrument to be its voluntary act and deed.

Before me:

Grant R. Ross
Notary Public for Oregon

My commission expires: 5-7-94



BOOK 247 PAGE 1922

EXHIBIT A

COVENANTS, CONDITIONS AND RESTRICTIONS

The conveyance of the aforescribed property is subject to the following covenants, conditions and restrictions, which are hereby imposed:

1. The subject property shall be developed in accordance with the proposal requirements established by the Newport Urban Renewal Agency, as contained in the Proposal Information Packet provided to the Grantee, and in accordance with the proposal submitted by the Grantee, which are on file with the Newport Urban Renewal Agency.

2. The first phase of the development shall commence, be completed and placed in service within eight years following the date of this conveyance and the second phase of the project shall be completed and placed in service not later than fifteen years following the date of this conveyance. The property thereafter shall be used for no other purpose for a period of 20 years following completion of the development.

3. In the event the Grantee shall fail to comply with the above requirements for completion and placement of Phase I of the development in service within eight years, as above provided, the Grantor shall have the right and option to repurchase the property for the same amount as the consideration herein stated, upon written notice from Grantor to Grantee within twelve months following the expiration of the said eight year period. If the Grantee shall complete development of Phase I, but shall not complete Phase II within fifteen years as above provided, the Agency may repurchase such part of the property as is not utilized for Phase I of the development based on a price of \$9.77 per square foot, upon notice to the Grantee not later than twelve months following the expiration of the fifteen year period.

4. Any other obligation under these covenants may be enforced by a suit for specific performance, injunction or similar equitable relief.

5. These requirements shall be in the nature of covenants running with the land, and shall be binding upon the Grantee and the heirs, successors and assigns of the Grantee, and the benefits shall inure to the Grantor and to the heirs, successors and assigns of the Grantor. These covenants may be amended from time to time by mutual agreement of the Grantor and the Grantee, or their successors.



STATE OF OREGON } ss.
County of Lincoln

I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon.
Book 247 Page 1936

WITNESS my hand and seal of said office affixed.
DANA W. JENKINS, County Clerk
By [Signature] Deputy

Doc : 6082333
Rect : 30674
07/24/1992 11:47:18AM 45.00
LT